(16,165.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 114.

FANNIE P. WILLIAMS, MARY H. BELL, ROBERT RANSOM, JR., ET AL., APPELLANTS,

vs.

JOHN W. PAINE, ESTELLE T. PAINE, JOHN PAINE, AND OGLE TAYLOE PAINE.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

FANNIE P. WILLIAMS *et al.* Appellants,
vs.
JOHN W. PAINE *et al.*
No. 421.

a Supreme Court of the District of Columbia.

FANNIE P. WILLIAMS, MARY H. BELL, Robert Ransom, Jr., James J. B. Ransom, Matt W. McCorkle Ransom, Henry H. Ransom, George G. Ransom, and Seymour H. Ransom
vs.
JOHN W. PAINE, ESTELLE T. PAINE, JOHN PAINE, OGLE TAYLOE PAYNE.
In Equity. No. 14529.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Bill in Partition. Filed February 10th, 1893.

1 In the Supreme Court of the District of Columbia.

FANNIE P. WILLIAMS, MARY H. BELL, Robert Ransom, Jr., James J. B. Ransom, Matt W. McCorkle Ransom, Henry H. Ransom, George G. Ransom, and Seymour H. Ransom
vs.
JOHN W. PAINE, ESTELLE T. PAINE, JOHN PAINE, OGLE TAYLOE PAINE.
In Equity. No. 14529.

To the supreme court of the District of Columbia, holding an equity court for said District:

The complainants respectively state as follows:

1. The complainants are citizens of the United States and reside as follows: Fannie P. Williams, of Newton, North Carolina; Mary H. Bell, of Fort Snelling, Minnesota; Robert Ransom, Jr., of New York city, State of New York; James J. B. Ransom, of Marion, North

Carolina; Matt W. McCorkle Ransom, of Newton, North Carolina; Henry H. Ransom, of Monroe, Louisiana; George G. Ransom, of Manchester, Virginia, and Seymour H. Ransom, of New Berne, North Carolina.

2. The defendants are believed to be residents of the city of Troy, New York, and are each of them sued in their own right.

3. That on the (17th day of July, A. D. 1837,) Henry Hunt, being seized in fee of an undivided one-half of all that real estate known as square fifty-three (53) of the ground plat or plan of the city of Washington, in the District of Columbia, as a tenant in common with Benjamin Ogle Tayloe (the said Tayloe being seized in fee of the other half), (by his will dated on that day, devised his said one-half interest in said square to his three children, Mary Ran-
2 som, Fannie Hunt, and George G. Hunt, in fee as tenants in common, and shortly afterwards said Henry Hunt departed this life. The said will is duly recorded in the office of the register of wills of said District in Will Book —, at folio —, and leave is prayed to read the same or a duly certified copy thereof on the hearing of this cause).

4. That on or about the 23rd day of May, A. D. 1859, said Mary Ransom, now deceased, being so seized in fee in her own right of said one-sixth undivided interest in said square numbered fifty-three (53), joined with her husband, Robert Ransom, Jr., in executing a certain paper-writing purporting to give to said George G. Hunt a power of attorney to control, manage, grant, bargain, sell, and convey all their right, title, and interest in and to said square of ground; the said instrument of writing stands recorded among the land records of the District of Columbia in Liber N. C. T. Number 52, at folio 335, and leave is prayed to read the same or a duly certified copy thereof on the hearing of this cause, the said record being hereby made a part of this bill as fully as if the same were here set forth at length.

5. The said Robert Ransom was, at the time of executing said paper, an officer in the Army of the United States; but soon afterwards he and his said wife left the city of Washington and went to the State of North Carolina, where he resigned his commission as an officer of said army and was appointed an officer in the army of the Confederate States and at once engaged actively in the war then existing between the States of the Union.

3 6. On the 29th day of November, A. D. 1864, which was after the said Ransom and wife had departed to the State of North Carolina as aforesaid, and while the said Ransom was engaged as aforesaid in the said war, the said George G. Hunt, who was then an officer in the Army of the United States, executed and acknowledged a paper-writing, purporting to be executed by authority of the supposed power of attorney aforesaid, whereby he contracted to secure a conveyance from said Robert and Mary Ransom of all the right, title, and estate of said Robert and Mary in and to said square fifty-three (53) to said Benjamin Ogle Tayloe in fee. The said paper-writing is recorded in Liber N. C. T. Number 52, at folio 328, of said land records, and leave is prayed to read the same

or a duly certified copy thereof on the hearing of this cause, the said record being hereby made a part of this bill as if the same were here set forth at length.

7. Complainants are advised by counsel and so aver that both of said instruments of writing described in paragraphs four and six of this bill are invalid and void so far as they purport to affect any interest or title in said square of the said Mary Ransom.

8. That by mesne conveyances Julia D. Paine, now deceased, and then wife of the defendant, John W. Paine, acquired all the right, title, and interest of said Benjamin Ogle Tayloe, Fannie Hunt, and George G. Hunt in said square and thereafter departed this life intestate, seized as aforesaid of said square, and leaving surviving her her said husband as tenant by the curtesy and the defend-
4 ants Estelle T. Paine, John Paine, and Ogle Tayloe Paine as her children and only heirs-at-law.

9. That said Mary Ransom departed this life at New Berne, North Carolina, on the 7th day of February, 1881, intestate, and leaving surviving her her said husband, Robert Ransom, as tenant by the curtesy and the complainants, Fannie P. Williams, Mary H. Bell, Robert Ransom, Jr., James J. B. Ransom, Matt W. McCorkle Ransom, Henry H. Ransom, George G. Ransom, and Seymour H. Ransom, as her children and only heirs-at-law. Said Robert Ransom, surviving husband of said Mary Ransom, departed this life on the — day of ——, A. D. 1892.

10. Since the death of said Julia D. Paine and about the year 1890 the said John W. Paine, without the knowledge or consent of complainants, erected twenty-two large brick dwelling-houses upon said square, which said houses occupy the entire square, and each is now occupied by separate and distinct persons, renting severally from said Paine by separate and distinct contracts, and said Paine is and has been ever since, as complainants are informed and believe, receiving the rents and profits thereof, and has rendered no account to complainants of said receipts, though requested so to do.

11. Wherefore, as complainants are without a full and adequate remedy at law and to the end that they may have their said one-sixth interest finally and completely set off to them as well against the said John W. Paine as said reversioners, and an account of the rents and profits which have been received by said John W. Paine, complainants pray:

5 *Prayers.*

1. That the process of this court may issue against said defendants requiring them to appear and answer the exigency of the bill.

2. That the said instrument of writing purporting to have been executed by said George G. Hunt and described in the sixth paragraph of the bill be declared null and void as a cloud upon the title of complainants.

3. That the right of complainants to a one-sixth interest in fee as tenants in common in said square fifty-three (53) be established against all the said defendants by decree of this court, as well the life tenant as said reversioners.

4. That complainants may have the said one-sixth of said square set off to them in one undivided interest, if that be found practicable. and, if not, that a sale of said square may be had under the direction of this court and a distribution of the proceeds be made to the complainants and defendants as they may be found entitled.

6. That the said John W. Paine be required, under the direction of this court, to account to complainants for the rents and profits received by him from said square.

7. That for the purposes aforesaid all necessary accounts may be had, directions given, and inquiries ordered.

8. That the complainants may have such further and other relief as the nature of the case may require and to the court may
6 seem proper.

FRANKLIN H. MACKEY,
Sol. for Compl'ts.

The defendants to this bill of complaint are John W. Paine, Estelle T. Paine, John Paine, and Ogle Tayloe Paine.

7 *Demurrer to Bill.*

Filed May 15, 1893.

In the Supreme Court of the District of Columbia.

FANNIE P. WILLIAMS *et al.*
vs.
JOHN W. PAINE *et al.*
} No. 14529. In Equity.

The demurrer of John W. Paine, John Paine, Ogle Tayloe Paine, and Estelle Paine to the bill of complaint of Fannie P. Williams and others against these defendants in chancery exhibited.

These defendants, not admitting the jurisdiction of this court over them by the order of publication herein, but expressly denying the same, and not waiving their objection thereto heretofore made and overruled in this cause, but expressly insisting upon the same, and, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true as the same are therein set forth, do demur thereto, and for causes of demurrer show:

1. That the complainants have not in and by their said bill stated such a case as does or ought to entitle them to any such discovery or relief as is thereby sought and prayed for.

2. That the said bill is multifarious, in that it seeks several distinct and independent matters of relief from the same and from several of the defendants.

3. That the said complainants seek in their said bill to recover possession of real estate alleged by said bill to be adversely held by one of the defendants, and as to which relief the complainants have a full, adequate, and complete relief at law.

8 4. That the said bill seeks to compel a partition of land between parties out of possession and a defendant in possession and holding adversely to all the complainants.

5. That the complainants in and by said bill seek to have set up and established against the defendants a title to real estate of which one of the defendants is in adverse possession and claiming to own against all the complainants.

6. That the complainants, being out of possession and the defendants in possession and holding adversely to all the complainants, are seeking to have removed as a cloud on title certain conveyances to the defendants or some of them or to those under whom such defendants are averred to claim title.

Wherefore and for divers other errors and imperfections these defendants demand the judgment of this court whether they shall be compelled to make any other or further answer to the said bill or any of the matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf sustained.

WM. G. JOHNSON,
Solicitor for Defendants.

Affidavit waived.
FRANKLIN H. MACKEY,
Sol. for Pl'tffs.

I certify that the above demurrer is, in my opinion, well founded in law.

WM. G. JOHNSON,
Sol. for Def'ts.

9 *Order Overruling Demurrer.*

Filed July 6, 1893.

In the Supreme Court of the District of Columbia.

FANNIE P. WILLIAMS *et al.*
vs.
JOHN W. PAINE *et al.*
} Equity. No. 14529.

This cause coming on to be heard at this term upon the demurrer to the bill, and the same having been argued by counsel and considered by the court, it is thereupon, this 6th day of July, A. D. 1893, adjudged, ordered, and decreed that the said demurrer be, and the same is hereby, overruled, and the defendant is given leave to plead or answer until on or before the first rule day of September next.

E. F. BINGHAM, *C. J.*

10 *Answer of John W. Paine.*

Filed September 9, 1893.

In the Supreme Court of the District of Columbia.

FANNIE P. WILLIAMS *et al.*
vs.
JOHN W. PAINE *et al.*
} No. 14529. In Equity.

The separate answer of the defendant John W. Paine to the bill of complaint against him and others in chancery exhibited in the above-entitled cause.

This defendant, not admitting the jurisdiction of the court herein nor waiving his objection thereto heretofore made by his counsel specially appearing for that purpose, but expressly denying the jurisdiction of this court and insisting upon his objection thereto so as aforesaid heretofore made, and now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, imperfections in the said bill contained, and not intending hereby to waive his demurrer to the said bill heretofore filed herein, but expressly insisting upon the same and answering said bill only under compulsion by the order of this court, for answer to the said bill or to so much thereof as he is advised it is material for him to make answer, answering, saith:

First. Answering the first paragraph of said bill, this defendant says he has no knowledge of the matters and things therein alleged and can neither admit nor deny the same, and if in any way material he demands strict proof thereof.

Second. Answering the second paragraph of said bill, this defendant says it is true that he is a resident and citizen of the State of New York.

11 Third. Answering the third paragraph of said bill, this defendant says that he has no knowledge and cannot therefore admit that Henry Huntt was, on the seventeenth of July, 1837, seized in fee of an undivided one-half of square fifty-three (53), in the city of Washington, District of Columbia, as tenant in common with Benjamin Ogle Tayloe, or that he died so seized, or that he devised the same to Mary Ransom, Fannie Huntt, and George G. Huntt, in fee as tenants in common, and therefore he demands strict proof of the said allegations; but whether he was ever so seized or not this defendant says that subsequent thereto and on June 21, 1864, the said Benjamin Ogle Tayloe was sole seized in fee of the said square fifty-three (53), and so continued sole seized in fee thereof until his death.

Fourth. Answering the fourth paragraph of said bill, this defendant does not admit that Mary Ransom was, on or about the 23rd day of May, 1859, seized in fee in her own right of an undivided one-sixth interest in the said square, and, if material, he demands

strict proof thereof. This defendant admits that on or about the 23rd day of May, 1859, at Carlisle, in the county of Cumberland, in the State of Pennsylvania, where the said Mary Ransom and Robert Ransom, Jr., her husband, were then residing, they executed and severally and separately acknowledged according to law an instrument of writing whereby George Gibson Huntt, who was the brother of the said Mary Ransom, was authorized to sell the interest of the said Mary Ransom and Robert Ransom, Jr., her husband, in and to square fifty-three (53), in said city; but he cannot admit that the said instrument of writing is correctly set forth and described in the said paragraph of said bill, and for greater accuracy
12 he prefers to refer to a certified copy of the said instrument hereunto annexed, marked Exhibit J. W. P. No. 1, which he prays may be taken and read as part of this answer.

Fifth. Answering the fifth paragraph of said bill, this defendant says that he has no knowledge as to whether the said Robert Ransom, Jr., was at the time of executing said paper an officer in the Army of the United States, and, if material, he demands strict proof thereof, nor can he admit that soon afterwards he and his wife left the city of Washington, went to the State of North Carolina, and that he resigned his commission in the Army of the United States and accepted an appointment in the army of the Confederate States and engaged in the war then existing between the States of the Union, and, if material, he demands strict proof thereof. Further answering said paragraph, this defendant says that he is informed and believes that there was no war existing between the States of the Union soon after the execution of said paper, and that said war did not occur until two years thereafter.

Sixth. Answering the sixth paragraph of said bill, this defendant says that he has no knowledge of the facts therein stated, except that he is informed and believes that in the summer or fall of 1864 the said Mary Ransom and her husband, Fannie Huntt, and George Gibson Huntt, through their counsel, Walter S. Cox, then a member of this bar and now an associate justice of this court, negotiated with Benjamin Ogle Tayloe for the purchase of any interest they had in square numbered fifty-three (53), and they, through their said counsel, agreed to sell to Benjamin Ogle Tayloe any such interest at and for the sum of twenty-five hundred dollars, which said sum was the full and fair value of an undivided one-half interest in fee-simple of said
13 square, and that said Benjamin Ogle Tayloe well and truly paid to their said counsel, Walter S. Cox, the said sum of twenty-five hundred dollars in lawful money of the United States; that in pursuance of such negotiation and agreement and in consideration of the said sum the said Fannie Huntt and George Gibson Huntt, executed and conveyed to the said Benjamin Ogle Tayloe all their interest in said square, and the said said George Gibson Huntt acting under the authority of the said Mary Ransom and, her husband, Robert Ransom, Jr., executed an instrument in writing, a certified copy of which is hereto attached, marked Exhibit J. W. P. No. 2, which it is prayed may be taken and read as part of this answer, which said instrument was intended by the said

George Gibson Huntt and the said Mary Ransom and Robert Ransom, Jr., her husband, and the said Benjamin Ogle Tayloe and the said Walter S. Cox, counsel for the said Huntt and Ransoms, and who as such counsel prepared the said paper, to pass all the right, title, and interest of the said Mary Ransom and her husband in and to the said square to the said Benjamin Ogle Tayloe, and the payment of the said sum by him, Tayloe, was made upon the faith that it did so pass the said interest as aforesaid.

And, further answering said paragraph, this defendant says that any interest which the said Mary Ransom or Robert, her husband, had in right of the said Mary Ransom or otherwise and of the said George Gibson Huntt and Fannie Huntt were equal, and that the said Mary Ransom received of the said twenty-five hundred dollars so paid as aforesaid by said Benjamin Ogle Tayloe one-third part thereof, to wit, eight hundred and thirty-three dollars thirty-three and one-third cents, lawful money of the United States, which
14 the said Mary Ransom with the knowledge and acquiescence of her husband, Robert Ransom, Jr., received and accepted in full satisfaction of any interest which she and he had in the said square.

And, further answering said paragraph, this defendant says that the said sum was so received and accepted as aforesaid with the full knowledge on the part of the said Mary and on the part of the said Robert Ransom, her husband, of the transaction, and was by them received in full satisfaction of any claim or demand they might have in and to said square and in ratification of the acts of the said George Gibson Huntt and of the said Walter S. Cox, as hereinbefore set forth; and this defendant says that he is advised and believes that the said Mary Ransom and Robert Ransom, Jr., and the complainants or any persons claiming through them are estopped from denying the validity and efficiency of the said transaction and of the instruments of writing hereinbefore referred to to pass to the said Benjamin Ogle Tayloe, his heirs and assigns, all the interest and estate of the said Mary Ransom and Robert Ransom, Jr., her husband, in and to the said square; and this defendant claims the same benefit of this defense by estoppel as though he had specially pleaded the same. Defendant further says upon information and belief that at the time of the said negotiations and purchase and conveyances hereinbefore detailed and of the payment of the purchase-money as hereinbefore set forth the said Benjamin Ogle Tayloe was in the possession of the entire square fifty-three (53), claiming to own the same in fee-simple in severalty, and that he and those claiming under him have ever since continued to hold the same in severalty and claiming to own the same in fee-simple.

15 Seventh. Answering the seventh paragraph of said bill, this defendant says he is advised and believes and therefore avers that the said instrument of writing hereinbefore referred to and in the fourth and sixth paragraphs of said bill mentioned are valid and binding in law and estop the complainants from setting up or asserting any right, title, or interest in and to the said square.

Eighth. Answering the eighth paragraph of said bill, this defendant says that it is true that Julia D. Paine died intestate and the wife of this defendant, leaving as her heirs-at-law the defendants Estelle T. Paine, John Paine, and Ogle Tayloe Paine, and he further says that she died seized in fee of the whole of said square fifty-three (53), and that this defendant was and is the life tenant thereof as tenant by the curtesy.

Ninth. Answering the ninth paragraph of said bill, this defendant says he has no knowledge as to any of the matters and things therein set forth and cannot admit nor deny the same, and, if material, he demands strict proof thereof.

Tenth. Answering the tenth paragraph of said bill, this defendant says that being desirous of deriving an income from said square as life tenant thereof during his own life and to provide a suitable improvement thereon for the benefit of his children, the heirs-at-law of himself and the said Julia D. Paine, deceased, namely, the defendants Estelle T., John, and Ogle Tayloe Paine, he has erected upon said square twenty-two substantial brick and stone dwellings, at a cost of about one hundred and twenty-two thousand dollars, and that the same are in the occupation of several and distinct tenants holding of and under this defendant and paying rent to him or his agents for that purpose appointed; that he has never ac-
16 counted to the complainants or any of them for any of the rents and profits derived from said square, and has never been requested so to do, but if so requested he would decline, as he denies and has always denied, as did also the said Benjamin Ogle Tayloe and all persons claiming under him since the year 1864, the right of the complainants or any of them to any participation in the said rents and profits or to any interest whatsoever in the said square and the improvements thereon.

Eleventh. Answering the eleventh paragraph of said bill, this defendant says that it is not true that the complainants are without full and adequate relief at law. On the contrary, he says that if they have any rights in and to the said square they have a plain and adequate remedy by action of ejectment at law for the possession of said square, and he claims the same benefit and advantage of this defense as though he had specially pleaded the same or demurred to the bill therefor.

And, further answering said paragraph, this defendant says that he and those through whom he claims have been in actual, open, continuous, hostile, and exclusive possession of the said square under claim and color of title for more than twenty years last past before the bringing of this bill, always claiming and holding adversely to the complainants and every of them and those through whom they claim, and denying the right of the complainants and every of them and those through whom they claim to any right, title, or interest in and to the said square or any part thereof, and he claims the same benefit and advantage of this defense as though he had specially pleaded the same.

And, further answering said bill, this defendant says that the said

Robert Ransom, Jr., in his lifetime filed a proceeding in
17 ejectment on the law side of this court, the same being numbered —— of the said dockets of this court, for the recovery of the possession of an undivided one-sixth interest in the said square, being the same undivided one-sixth interest claimed by the complainants herein, and that said suit was by him abandoned, and it is prayed that the record and proceedings in said suit may be taken and read as a part of this answer; and defendant also says that the complainants herein filed a suit in ejectment against this defendant, the same being numbered —— of the law dockets of this court, seeking to recover from this defendant an undivided one-sixth part of said square and also mesne profits thereof, and that said suit was for the recovery of the same undivided one-sixth interest now claimed by the complainants in this cause, and that the complainants voluntarily abandoned and dismissed the said proceeding; and it is prayed that the record and proceedings in said suit may be taken and read as a part of this answer. Defendant also says that the complainants filed another action in ejectment against this defendant, seeking to recover thereby an undivided one-sixth interest in the said square which they seek to recover in this bill, the said proceeding at law being numbered —— of the law dockets of this court, which proceeding is still pending and undetermined between the said complainants and this defendant; and it is prayed that the record and proceedings in said suit at law may be taken and read as a part of this answer.

Further answering said bill, this defendant says that he is advised and believes that even if the said interest, if any there
18 was, in the said Mary Ransom or Robert Ransom, Jr., her husband, did not pass to the said Benjamin Ogle Tayloe by the instrument of writing aforesaid, that nevertheless the said Benjamin Ogle Tayloe purchased the same in good faith and for full value accepted and received by the said Mary Ransom and Robert, her husband, and that this defendant has in good faith and while in possession of said square and claiming to own the same erected thereon substantial improvements; that during all the time for more than twenty-five years past all the taxes and other public dues and assessments against the said real estate have been paid by this defendant or those through whom he claims, and that neither the said complainants nor the said Mary Ransom nor Robert, her husband, nor any person through whom they or any of them claim has during the said time paid any of the taxes or other public dues or assessments against said land or in any way contributed to the improvement thereof, and that should the court ultimately decide that the complainants have an undivided one-sixth interest in the said land this defendant is advised and believes and therefore charges that they cannot recover the same without first indemnifying this defendant for the taxes and assessments paid upon the said square, and also for the costs of the improvements thereon erected, and that they are in equity also chargeable in any such accounting with the full amount of the purchase-money for the said interest in said square, namely, eight hundred and thirty-three dollars and thirty-

three and one-third cents, with legal interest thereon from the time of the payment thereof.

Further answering, defendant says that it is nowhere alleged in the said bill by the said complainants that the said Mary Ransom and Robert Ransom, Jr., her husband, did not receive the
19–28 full consideration for the undivided one-sixth part of said square, nor do they in their said bill offer to return the said sum, with legal interest thereon, and he is advised and charges that it is immaterial in this case whether the said instruments hereinbefore referred to be valid or not if the said Mary and Robert Ransom, Jr., agreed to part with their interest in the said square for the consideration mentioned and received and accepted the same in satisfaction thereof; they and those claiming through them are now and forever estopped from setting up or asserting any right, title, interest, or claim in the said square, and that they are in equity bound, if need be, to make proper conveyances to this defendant and his codefendants of all interests which the said Mary Ransom and Robert, her husband, had or they through her might have in the said square.

And, having fully answered, this defendant prays to be hence dismissed with his reasonable costs in this behalf so unjustly sustained.

JNO. W. PAINE.

WM. G. JOHNSON,
Sol. for Def't.

I do solemnly swear that I have read the annexed and aforegoing answer by me subscribed and know the contents thereof, and that the matters and things therein stated on my personal knowledge are true, and those stated on information and belief I believe to be true.

JNO. W. PAINE.

Subscribed and sworn to before me this twenty-first day of August, A. D. 1893.

EDWARD DOWNES,
[SEAL.] *U. S. Consul and ex Officio a Notary Public.*

* * * * * * *

29 These defendants, further answering, say that they are not in possession of the said square and have never been, the said title in fee having descended to them upon the death of their mother, Julia D. Paine, subject to the immediate right of possession and tenancy for life in their father and codefendant, John W. Paine, and that they have no interest or concern whatsoever as to any accounting between the complainants and the defendant John W. Paine, and that in so far as this bill seeks relief in that regard it is as to these defendants multifarious, and they claim the same benefit and advantage of this defense as though they had specially demurred to the bill therefor.

30 And, having fully answered, these defendants pray to be hence dismissed with their reasonable costs in this behalf so unjustly sustained.

ESTELLE T. PAINE.
JOHN PAINE.
OGLE TAYLOE PAINE.

WM. G. JOHNSON,
Sol. for Def'ts.

We do solemnly swear that we have read the annexed and aforegoing answer by us subscribed and know the contents thereof, and that the matters and things therein stated on our personal knowledge are true, and those stated on information and belief we believe to be true.

JOHN PAINE.
OGLE TAYLOE PAINE.

Subscribed and sworn to before me this twenty-first day of August, A. D. 1893, by John Paine and Ogle Tayloe Paine.

EDWARD DOWNES,
[SEAL.] *U. S. Consul and ex Officio a Notary Public.*

I do solemnly swear that I have read the annexed and aforegoing answer by me subscribed and know the contents thereof, and that the matters and things therein stated on my personal knowledge are true, and those stated on information and belief I believe to be true.

ESTELLE T. PAINE.

Subscribed and sworn to before me this fourteenth day of September, A. D. 1893.

CHARLES BRIMBLECOM,
[SEAL.] *Notary Public.*

31-35 *Replication.*

Filed September 26, 1893.

In the Supreme Court of the District of Columbia.

FANNIE P. WILLIAMS *et al.* *vs.* JOHN W. PAINE *et al.* } In Equity. No. 14529.

The plaintiffs join issue on the several answers of the defendants John W. Paine, Estelle T. Paine, John Paine, and Ogle Tayloe Paine and will hear the cause on the pleadings and testimony to be taken.

FRANKLIN H. MACKEY,
H. O. CLAUGHTON,
Sol's for Compl'ts.

* * * * * * *

36 Deposition of FANNIE P. WILLIAMS, who, being duly cautioned and sworn to tell the truth, deposes and says as follows:

1. To the 1st interrogatory, which is as follows: "State your name, age, and residence," she says:

Fannie Priscilla Williams; thirty-seven (37) years; Newton, North Carolina.

2. To the 2nd interrogatory, which is as follows: "What are the names of your parents?" she says:

Robert Ransom; Mary Elizabeth (known as Minnie) Hunt Ransom.

3. To the 3rd interrogatory, which is as follows: "State whether you are one of the plaintiffs in this suit," she says:

Yes.

4. To the 4th interrogatory, which is as follows: "Do you know the date of your parents' marriage; and if you say that you do, give the date and state the source or sources of your knowledge," she says:

Yes; February 7th, 1856; from the family Bible, from my parents, and from persons who witnessed the ceremony.

5. To the 5th interrogatory, which is as follows: "Are your parents living or dead; and if you say that they are dead, give the dates of their deaths," she says:

Both dead. Mother died February 7th, 1881; father died January 14th, 1892.

6. To the 6th interrogatory, which is as follows: "Did your parents have other children beside yourself; and if you say that they did, give their names, if you know, and also, if you know, the dates of their births," she says:

Yes; Mary Seymour Hunt, born Oct. 4, 1858; Robert and Gibson Hunt (twins), born December 26, 1860; James Boisseau Janes Hunt, born January 20, 1864; Matt Carry Whitaker Hunt, born February 4, 1866; Henry Hunt, born March 5, 1867; Geo. Gibson Hunt, born April 18, 1869; Seymour Herbert Hunt, born November 28, 1870.

7. To the 7th interrogatory, which is as follows: "Are any of your brothers or sisters dead; and if you say that any are dead, give the names and age at the time of death," she says:

37 Yes; Gibson Hunt, aged six months.

8. To the 8th interrogatory, which is as follows: "Do you know where your brothers and sisters are now residing; and, if so, state where they reside," she says:

Yes; Mary Seymour (Mrs. Geo. Bell) at Ithaca, New York; Robert at 317 Second avenue, New York; James Brettmer, North Carolina; Matt. (Mrs. Dr. McCorkle) at Newton, North Carolina; Henry at 1906 Avenue M, Galveston, Texas; George at Avondale, Alabama; Seymour, Brooklyn, New York.

9. To the 9th interrogatory, which is as follows: "Did your mother leave a will?" she says:

No.

10. To the 10th interrogatory, which is as follows: "Do you know what was your father's occupation during the years 1861, 1862, 1863, and 1864; and if you say that you do, state what that occupation was," she says:

Yes; he was occupied in the civil war.

11. To the 11th interrogatory, which is as follows: "If you say that he was in military service during said years, state in what army he served and in what capacity," she says:

He served in the Confederate army; was first made colonel and raised, near Ridgway, North Carolina, the first North Carolina cavalry; afterwards was promoted to be major general in the same way.

12. To the 12th interrogatory, which is as follows: "Have you a family Bible containing the records of your parents' marriage and the births of their children?" she says:

Yes; I have what was the original and only family Bible until 1874, after the birth of all my brothers and sisters, when on account of space to contain a record of deaths my father bought a large one and copied the record into it. The size accounts for its containing no record of my brother Gibson's death, which occurred in July, 1861.

13. To the 13th interrogatory, which is as follows: "If you say that you have, state how long said Bible has been in your possession and in whose possession it was before it came into yours," she says:

In my possession since my father's death, in 1892, and was kept by my father as long as he lived.

38 14. To the 14th interrogatory, which is as follows: "If you say that it was in your parents' possession before it came into yours, state how long it had been in their possession," she says:

The Bible was given to my mother at the time of her marriage to my father and was used by them as a family record until after the birth of their last child.

15. To the 15th interrogatory, which is as follows: "Do you know by whom the records of said marriage and births were entered in said Bible and in whose handwriting they are and when they were so entered; and if you say that you do, state by whom and when they were entered," she says:

The records were made by my father. They are in his handwriting and were made by him immediately after the occurrence of the events recorded.

16. To the 16th interrogatory, which is as follows: "What are the entries in said Bible of your parents' marriage and the births of their children and the deaths of any, if any died?" she says:

Gibson Hunt's death occurred in July, 1861, but was not recorded in the small Bible on account of space.

17. To the 17th interrogatory, which is as follows: "Will you file with the commissioner taking this deposition said Bible that it may be used in evidence in this case; and if you say that you will, then do so," she says:

Yes; I herewith file the same family Bible, marked Exhibit (B).

18. To the 18th interrogatory, which is as follows: "Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them or that may be material to the subject of this your examination or the matters in question in this cause? If you can, set forth the same fully and at large in your answer," she says:

I cannot.

FANNIE P. WILLIAMS.

Sworn to and subscribed before me this 18th day of November, 1893. —— ——.

39 Exhibit "B" referred to and filed with deposition of Fannie P. Williams is a Bible, on the fly-leaf of which is the following in writing:

Minnie Huntt, with the love & prayers of S. B. R.

"Take the helmet of salvation and the sword of the spirit, which is the word of God."

* * * * * * *

On the blank leaves between the Old and New Testaments is written the following record of births:

Robert Ransom, Jr., & Minnie Huntt, married, Washington city, D. C., February 7th, 1856.

Fannie Priscilla Huntt, eldest child of Robert & Minnie Ransom, born November 12th, 1856, Washington city, D. C.

Mary Seymoura Huntt, second child of Robert & Minnie Ransom, born October 4th, 1858, Carlisle, Pa.

Robert Huntt & Gibson Huntt (twin sons), third & fourth children of Robert & Minnie Ransom, born December 26th, 1860 (Indian Territory, Upper Arkansas river) (Fort Wise).

James Boissean Jones Huntt, fifth child of Robert & Minnie Ransom, born January 20th, 1864, at Dellwood, Chesterfield county, Virginia.

Matt Cary Whitaker Huntt (daughter), sixth child of Robert & Minnie Ransom, born February 4th, 1866, at Wilmington,
40–42 N. C.

Henry Huntt, seventh child of Robert & Minnie Ransom, born March 5th, 1867, at Wilmington, N. C.

George Gibson Huntt, eight- child of Robert & Minnie Ransom, born at Wilmington, N. C., the 18th of April, 1869.

Seymour Herbert Huntt, ninth child of Robert & Minnie Ransom, born at Wilmington, N. C., Nov. 26th, 1870.

* * * * * * *

43 *Leave to Amend Bill.*

Filed December 16, 1893.

In the Supreme Court of the District of Columbia.

FANNIE P. WILLIAMS *et al.*
vs.
JOHN W. PAINE *et al.*
} In Equity. No. 14529.

On petition of plaintiffs, by Franklin H. Mackey, Esq., their solicitor, it is this 16th day of December, A. D. 1893, ordered that plaintiffs have leave to amend their bill as prayed.

CHAS. C. COLE,
Asso. Justice.

44 *Amended Bill.*

Filed February 10, 1893.

In the Supreme Court of the District of Columbia.

FANNIE P. WILLIAMS, MARY H. BELL, ROBERT Ransom, Jr., James J. B. Ransom, Matt W. McCorkle ——, Henry H. Ransom, George G. Ransom, and Seymour H. Ransom
vs.
JOHN W. PAINE, ESTELLE T. PAINE, JOHN PAINE, OGLE TAYLOE PAINE.
} In Equity. No. 14529, Doc. 35.

To the supreme court of the District of Columbia, holding an equity — for said District:

The complainants respectively state as follows:

1. The complainants are citizens of the United States and reside as follows: Fannie P. Williams, of Newton, North Carolina; Mary H. Bell, of Fort Snelling, Minnesota; Robert Ransom, Jr., of New York city, State of New York; James J. B. Ransom, of Marion, North Carolina; Matt W. McCorkle ——, of Newton, North Carolina; Henry H. Ransom, of Monroe, Louisiana; George G. Ransom, of Manchester, Virginia, and Seymour H. Ransom, of New Berne, North Carolina.

2. The defendants are believed to be residents of the city of Troy, New York, and are each of them sued in their own right.

3. That on or about the month of September, A. D. 1838, Henry Hunt, being seized in fee of an undivided one-half of all that real estate known as square fifty-three (53) of the ground plat or
45 plan of the city of Washington, in the District of Columbia, as a tenant in common with Benjamin Ogle Tayloe (the said Tayloe being seized in fee of the other half), departed this life without having disposed by will or otherwise of said square fifty-three (53) and leaving as his only heirs-at-law his three children, to wit,

Mary Ransom, Fannie Huntt, and George G. Huntt, to whom said land descended equally.

4. That on or about the 23rd day of May, A. D. 1859, said Mary Ransom, now deceased, being so seized in fee in her own right of said one-sixth undivided interest in said square numbered fifty-three (53), joined with her husband, Robert Ranson, Jr., in executing a certain paper-writing purporting to give to said George G. Huntt a power of attorney to control, manage, grant, bargain, sell, and convey all their right, title, and interest in and to said square of ground; the said instrument of writing stands recorded among the land records of the District of Columbia in Liber N. C. T. Number 52, at folio 335, and leave is prayed to read the same or a duly certified copy thereof on the hearing of this cause, the said record being hereby made a part of this bill as fully as if the same were here set forth at length.

5. The said Robert Ransom was, at the time of executing said paper, an officer in the Army of the United States, but soon afterwards he and his said wife left the city of Washington and went to the State of North Carolina, where he resigned his commission as an officer of said army and was appointed an officer in the army of the Confederate States, and at once engaged actively in the war then existing between the States of the Union.

46 6. On the 29th day of November, A. D. 1864, which was after the said Ransom and wife had departed to the State of North Carolina as aforesaid and while the said Ransom was engaged as aforesaid in the said war, the said George G. Hunt, who was then an officer in the Army of the United States, executed and acknowledged a paper-writing, purporting to be executed by authority of the supposed power of attorney aforesaid, whereby he contracted to secure a conveyance from said Robert and Mary Ransom of all the right, title, and estate of said Robert and Mary in and to said square fifty-three (53) to said Benjamin Ogle Tayloe in fee. The said paper-writing is recorded in Liber N. C. T. Number 52, at folio 328, of said land records, and leave is prayed to read the same or a duly certified copy thereof on the hearing of this cause, the said record being hereby made a part of this bill as if the same were here set forth at length.

7. Complainants are advised by counsel and so aver that both of said instruments of writing described in paragraphs four and six of this bill are invalid and void so far as they purport to affect any interest or title in said square of the said Mary Ransom.

8. That by mesne conveyances Julia D. Paine, now deceased and then wife of the defendant John W. Paine, acquired all the right, title, and interest of said Benjamin Ogle Tayloe, Fannie Hunt, and George G. Hunt in said square and thereafter departed this life intestate, seized as aforesaid of said square, and leaving surviving her her said husband as tenant by the curtesy and the defend-

47 ants Estelle T. Paine, John Paine, and Ogle Tayloe Paine as her children and only heirs-at-law.

9. That said Mary Ransom departed this life at New Berne, North Carolina, on the 7th day of February, 1881, intestate, and

leaving surviving her her said husband, Robert Ransom, as tenant by the curtesy and the complainants, Fannie P. Williams, Mary H. Bell, Robert Ransom, Jr., James J. B. Ransom, Matt W. McCorkle Ransom, Henry H. Ransom, George G. Ransom, and Seymour H. Ransom, as her children and only heirs-at-law. Said Robert Ransom, surviving husband of said Mary Ransom, departed this life on the — day of ——, A. D. 1892.

10. Since the death of said Julia D. Paine and about the year 1890 the said John W. Paine, without the knowledge or consent of complainants, erected twenty-two large brick dwelling-houses upon said square, which said houses occupy the entire square, and each is now occupied by separate and distinct persons renting severally from said Paine by separate and distinct contracts, and said Paine is and has been ever since, as complainants are informed and believe, receiving the rents and profits thereof, and has rendered no account to complainants of said receipts, though requested so to do.

11. Wherefore, as complainants are without a full and adequate remedy at law, and to the end that they may have their said one-sixth interest finally and completely set off to them as well against the said John W. Paine as said reversioners, and an account of the rents and profits which have been received by said John W. Paine, complainants pray:

48 *Prayers.*

1. That the process of this court may issue against said defendants requiring them to appear and answer the exigency of the bill.

2. That the said instrument of writing purporting to have been executed by said George G. Hunt and described in the sixth paragraph of the bill be declared null and void as a cloud upon the title of complainants.

3. That the right of complainants to a one-sixth interest in fee as tenants in common in said square fifty-three (53) be established against all the said defendants by decree of this court, as well the life tenant as said reversioners.

4. That complainants may have the said one-sixth of said square set off to them in one undivided interest, if that be found practicable, and if not that a sale of said square may be had under the direction of this court and a distribution of the proceeds be made to the complainants and defendants as they may be found entitled.

6. That the said John W. Paine be required, under the direction of this court, to account to complainants for the rents and profits received by him from said square.

7. That for the purposes aforesaid all necessary accounts may be had, directions given, and inquiries ordered.

8. That the complainants may have such further and other relief as the nature of the case may require and to the court may seem proper.

FRANKLIN H. MACKEY,
Sol'r for Complainants.

49 The defendants to this bill of complaint are John W. Paine, Estelle T. Paine, John Paine, and Ogle Tayloe Paine.

50 & 51 *The Joint and Separate Answer of Defendants.*

Filed January 23, 1894.

In the Supreme Court of the District of Columbia.

FANNIE P. WILLIAMS *et al.*
vs.
JOHN W. PAINE *et al.*
} No. 14529. In Equity.

The answer of the defendants to the amended bill filed herein, reserving to themselves & each of them all & all manner of objections heretofore made, either of special appearance, motion, or demurrer, howsoever made, answering, say they have no personal knowledge of any of the matters & things in said amendment specified & set forth &, if material, demand strict proof thereof, save that they admit upon information & belief that Henry Huntt left him surviving as his only heirs-at-law Mary, otherwise known as Minnie Huntt, afterwards Mary Huntt Ransom; Fannie Huntt, now Fannie Huntt Gibson, and George Gibson Huntt.

JOHN W. PAINE,
ESTELLE T. PAINE,
JOHN PAINE,
OGLE TAYLOE PAINE,
By WM. G. JOHNSON,
Their Solicitor.

WM. G. JOHNSON,
Sol. for Defendants.

Affidavit waived & signatures also.

FRANKLIN H. MACKEY,
Sol. for Pl'ffs.

* * * * * * *

52 WASHINGTON, D. C., *November* 21, 1893,
TUESDAY—at 3 o'clock p. m.

Met pursuant to notice.

Present: Franklin H. Mackey, Esq., solicitor for complainants, and Calderon Carlisle, Esq., solicitor for defendants.

Whereupon Gen. JOHN G. PARKE, a witness produced on the part of the complainants, being first duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. MACKEY:

Q. You are an officer in the United States Army?
A. Yes.

Q. And were in 1852 and 1853?
A. Yes, sir.
Q. And up to the war and through the war?
A. Yes.
Q. Were you acquainted with one Lieutenant Robert Ransom?
A. Yes, sir.
Q. Do you know whether he was married or not?
A. Yes; I was present at the ceremony?
Q. In what capacity?
A. I believe as one of his groomsmen?
Q. Whom did he marry?
A. He married Miss Huntt; I think known generally as Miss Minnie Huntt.
Q. That was her nickname, Minnie Huntt?
A. That is my impression; if I recollect right there were
53 two sisters, and the name of the one he married was Minnie Huntt.
Q. When did he marry her, General?
A. The date I cannot state, but it occurred subsequent to the winter, I think, of 1851 and 1852, and prior to a date about two years preceding 1857. My reason for stating this is that I was not at that time of my service over a year in any one place, and I was in Washington during the winter and away during the summer for a year and back again, so that the exact date I do not remember.
Q. You say she was married Minnie Huntt. Do you know whether her name was Mary or not?
A. No; I do not.
Q. Do you know who she was the daughter of?
A. Well, my impression is that she was the daughter of Doctor Huntt, and that General Gibson, a commissary general of the army, was her guardian. I think at this time she was an orphan.
Q. Do you know one George Gibson Huntt, an officer in the army at that time?
A. I remember George Gibson Huntt. Whether he was at that time an officer in the army I do not remember, but I have known him since as an officer of the army.
Q. Do you know what his relation was to Miss Huntt, who married General Ransom?
A. Well, no; I cannot say; I presume he was a brother, but I won't be certain.

Mr. CARLISLE: No cross-examination.

JOHN G. PARKE.

Subscribed and sworn to before me this 22d day of November, A. D. 1893.

J. ARTHUR LYNHAM,
Examiner in Chancery.

54 Mr. MACKEY: I offer in evidence the following deeds:
A deed from Robert Ransom, Jr., to George Gibson Huntt, dated May 23, 1859, recorded January 14, 1865.

A deed from George Gibson Huntt to Benjamin Ogle Tayloe dated November 29, 1864, recorded January 14, 1865.

And a deed from George W. Peter to Henry Huntt and Benjamin Ogle Tayloe, dated January 23, 1837, recorded January 27, 1837.

Filed by the examiner, marked Exhibits J. A. L. Nos. 1, 2, and 3, respectively.

Objected to by Mr. Carlisle.

The taking of testimony on the part of the complainants is here announced as closed.

* * * * * * *

55 PLAINTIFFS' EXHIBIT J. A. L. No. 1.

Filed January 31, 1894.

Liber N. C. J. 52, folio 330.

Robert Ransom, Jr., to George Gibson Huntt. } Recorded 14th January, 1865. Power of Attorney.

Know all men by these presents: Whereas Lieut. Robert Ransom Jr. of the United States Army and Mary his wife in right of the said Mary *an* seized in fee-simple as tenants in common, with the sister and brother of the said Mary to wit: Fanny Huntt and George Gibson Huntt and with B. O. Tayloe of certain lots of ground in the city of Washington in the District of Columbia which are described as follows: Lots No. one and three in square No. five; lot No. ten in square No. fourteen lots five and nine in square No. seventeen lots No. three and four in square No. twenty-eight lot No. three in square No. thirty; and the entire square No. fifty-three. To provide for the contingency of our absence we the said Robert Ransom Jr. and Mary my wife do by these presents constitute and appoint and in our place put and depute the said George Gibson Huntt of Washington city aforesaid to be our true and lawful attorney-in-fact, for us and in our name place and stead, to control, manage, grant, bargain and sell and in that event convey all our right, title and interest in and to the said lots and square of ground or any part or parts thereof, or to join in and for us and in our name to sign any proceedings in partition of the said lots and square or to appear for us in court for that purpose: And in regard to the said real estate to do execute and perform every act and thing necessary to be done as fully and amply as we might or could do if personally present. And we do hereby ratify and confirm all and whatsoever our said attorney-in-fact may legally do in the premises.

In witness whereof we the said parties to these presents have hereunto set our hands and seals this twenty-third day of
56 May A. D. one thousand eight hundred and fifty-nine.

R. RANSOM, JR. [SEAL.]
M. H. RANSOM. [SEAL.]

Witness- present:
S. H. GRAHAM.
A. L. SPONSLER.

STATE OF PENNSYLVANIA, } *sct:*
County of Cumberland, }

Personally appeared before me, president judge of the ninth judicial district of Pennsylvania, Robert Ransom, Jr., and Mary, his wife, the parties who executed the within and foregoing power of attorney, who are personally known to me, and acknowledged the same to be their act and deed, to the end that the same might be recorded as such according to law, and the said Mary, being *being* of full age and by me examined separate and apart from her said husband, declared that she did execute and acknowledge the same freely and voluntarily and without being induced to do so by fear or threats of or ill usage by her said husband or by fear of his displeasure, and then and there did in my presence sign and seal the same out of the presence and hearing of her husband.

In witness whereof — have hereunto set my hand and seal this twenty-fourth day of May, A. D. 1859.

J. H. GRAHAM.

STATE OF PENNSYLVANIA, } *sct:*
County of Cumberland, }

I, Philip Quigley, the prothonotary of the court of common pleas of Cumberland county, which is within the ninth judicial district of the State aforesaid and part thereof, do certify that the Hon. James H. Graham is the president judge of the said judicial district, with full power and authority to take the acknowledgments of deeds, and that full faith and credit are due to all his official acts as such.

In testimony whereof I have hereunto set my hand and the seal of said court, at Carlisle, the twenty-fourth day of May, A. D. 1859.

P. QUIGLEY, *Proth'y.* [INT. SEAL.]

57 STATE OF PENNSYLVANIA, } *sct:*
County of Cumberland, }

I, Hon. James H. Graham, president judge of the court of common pleas of Cumberland county aforesaid, do hereby certify that Philip Quigley, who makes the above certificate, is the prothonotary of the court of common pleas of said county, and that his certificate is in due form.

In testimony whereof I have hereunto set my hand and seal the twenty-fourth day of May, A. D. 1859.

J. H. GRAHAM. [SEAL.]

Endorsement.

Fee, $1.50.

This is to certify that the within is a true and verified copy of an instrument as recorded in Liber N. C. T. No. 52, folio 330 *et seq.*, one of the land records of the District of Columbia.

February 6, 1893.

[Seal Office of the Recorder of Deeds, Washington, D. C.]

GEORGE F. SCHAYER,
Dep. Recorder of Deeds.

58 PLAINTIFF'S EXHIBIT J. A. L. No. 2.

Filed January 31, 1894.

Liber N. C. J. 52, folio 328.

George Gibson Huntt to Benjamin Ogle Tayloe. } Recorded 14th January, 1865. Contract of Sale.

Know all men by these presents, that I, George Gibson Huntt, by virtue of the annexed power of attorney to me from Robert Ransom Jr. and Mary Ransom his wife, and for and in consideration of the sum of eight hundred and thirty-three $\frac{33}{100}$ dollars to me in hand paid by Benjamin Ogle Tayloe, of the city of Washington in the District of Columbia, receipt of which is hereby acknowledged have bargained and sold to said B. O. Tayloe, his heirs and assigns, all the right, title, and estate of them, the said Robert Ransom Jr. and Mary Ransom, being one undivided third part of, in, and to these pieces of ground in the city of Washington aforesaid, known and described, as lots Nos. one and three in square No. five lot No. ten in square No. fourteen, lots Nos. five and nine in square No. seventeen, lots Nos. three and four in square No. twenty-eight, lot No. three in square No. thirty and the whole of square No. fifty-three, with the improvements and appurtenances; and I hereby further agree in behalf of said Robert and Mary Ransom, that they shall and will, as soon as convenient, make and execute a proper deed of conveyance of said premises to said Benj'n O. Tayloe, in fee-simple.

In testimony whereof I have hereunto set my hand and seal this 29th day of November A. D. 1864.

GEORGE GIBSON HUNTT. [SEAL.]

[Stamp, $1. G. G. H. Jan. 4th, '65.]

Witness:

W. KLINE.

STATE OF PENNSYLVANIA, } *sct:*
County of Dauphin, }

We, John Magluchlin & W. Kline, aldermen and *ex officio* justices of the peace in and for the county aforesaid, do hereby cer-
59–63 tify that George Gibson Huntt, party to a certain contract of sale bearing date in the year of our Lord one thousand and eight hundred and sixty-four, and hereto annexed, personally appeared before us at our county aforesaid, the said George Gibson Huntt being personally well known to us as the person who executed said contract, and acknowledged the same to be his act and deed.

Given under our hands and seals this January 4th, A. D. 1865.

JOHN MAGLAUCHLIN, [SEAL.]
Ald, ex Officio J. of P.

W. KLINE, [SEAL.]
Ald., ex Officio Justice of the Peace.

DAUPHIN COUNTY, *ss:*

I, Josiah C. Young, clerk of the common pleas court of Dauphin county, and having official cognizance of the fact, do hereby certify that John Maglauchlin & W. Kline, Esquires, before whom the aforegoing acknowledgment was made, were at the date thereof justices, as they purport to be.

In testimony whereof I have hereto set my hand and affixed the seal of said court on this tenth day of January, A. D. 1865.

J. C. YOUNG, *Clerk.* [INT. SEAL.]

[Stamp, 5 cts. J. C. Y. Jan'y 1, 1865.]

* * * * * * *

64 & 65 *Replication to Answer to Amended Bill.*

Filed February 2, 1894.

In the Supreme Court of the District of Columbia.

FANNIE P. WILLIAMS *et al.*
vs.
JOHN W. PAINE *et al.*
} In Equity. No. 14529.

The complainants join issue on the answers of the defendants to the amended bill, and will hear the case on the pleadings, testimony, and exhibits.

FRANKLIN H. MACKEY,
Solicitor for Compl'ts.

* * * * * * *

66 JOHN W. PAINE, witness for defendants.

Direct examination by Mr. WILLIAM G. JOHNSON:

Q. Please state your place of residence.
A. 49 Second street, Troy, New York.
Q. Do you know the defendants Estelle T. Paine, John Paine, Ogle Taylor Paine?
A. I do know them all.
Q. What relation do you bear to those three defendants?
A. I am their father.
Q. Who was their mother?
A. Julia Dickinson Taylor.
Q. Is Mrs. Paine living or dead?
A. Dead.
Q. When did she die?
A. On the 26th of February, 1872.
Q. When were you and Miss Taylor married?
A. On May 3rd, 1865.
Q. Was she the mother of these three defendants?
67 A. She was.
Q. Did you know Benjamin Ogle Taylor?

A. I knew Benjamin Ogle Tayloe.
Q. Is he living or dead?
A. Dead.
Q. About when did he die?
A. It is the same day of the month as my wife's death. He died on the 25th of February, 1868, in the city of Rome, Italy.
Q. Do you know the property in the city of Washington, District of Columbia, described as square numbered 53?
A. I do.
Q. State when you first had any personal knowledge of the square.
A. After it fell to my wife in the division of her father's real estate.
Q. When was that?
A. Do you mean when the deeds passed?
Q. I mean about the date of the time when the division you spoke of was made?
A. The division was made in '69; I think the latter part of the year '69.
Q. You say that your first personal acquaintance with the property occurred some time in 1869?
A. Yes, sir.
Q. Do you know whether or not your wife, Mrs. Paine, ever made any claim to the ownership of that property?
A. Yes, sir; I know she claimed to own it.
Q. For how long did she claim to own it?
A. She claimed to own it from the time it was deeded to her by the executors of Benjamin Ogle Tayloe.
Q. From that time till when?
A. Till the time of her death.
Q. Do you know whether or not she, through herself or through any one else, exercised any acts of ownership over the property.

68

Mr. MACKEY: Objected to as incompetent on the ground that it is not competent for a husband to testify as to any facts the knowledge of which was obtained from his wife.

A. She did through me, as her husband.
Q. Will you please state what acts of ownership you exercised over that property in behalf of your wife?
A. The principal acts I performed were the payments of taxes.
Q. Did you do any other act with respect to the property during her lifetime?
A. Yes, sir; I rented it several times.
Q. Do you remember for what purposes you rented it?
A. I rented it once to a man that made asphalt or concrete or some pavement in the city of Washington. He occupied the whole square and made his pavement there. I rented it to him for a few years
Q. Did you rent it to any one else?

A. Yes, sir; I rented it to a party by the name of H. Tumelty for a coal and wood yard.

Q. Did those persons pay any rent for the premises?

A. Yes, sir.

Q. To whom did they pay it?

A. They paid it to my agent in Washington.

Q. I will ask you to state whether in renting the property you rented it in your own behalf at that time or in behalf of your wife.

A. I rented it in behalf of my wife, as it was her property.

Q. After the death of Mrs. Paine did you exercise any acts
69 of ownership over that square?

A. Yes, sir; ever since her death I have.

Q. I would like you to state, if you know, whether you and the other defendants claim any title to the property.

A. We do.

Q. Have you and they claimed title before now?

A. Yes, sir.

Q. For how long?

A. Ever since her death.

Q. Ever since Mrs. Paine's death?

A. Yes, sir.

Q. Will you state, if you know, whether the taxes on that square have been paid since 1869 or not?

A. They have been.

Q. Will you please state, if you know, who has paid them?

A. I have paid them. My agent, although he receives my rents in Washington, he does not pay my taxes. I have my tax bills in Washington sent direct to me at home, and I remit for taxes myself.

Q. Did you observe that practice in regard to square 53?

A. I did; I paid taxes only the other day to the 30th of June.

Q. I wish you would state whether or not there were any improvements on that square in 1868, at the time of Benjamin Ogle Tayloe's death.

A. I think it was vacant; indeed, I know it was vacant.

Q. Were there any improvements on it at the time of Mrs. Paine's death?

A. Nothing at all.

Q. Are there any improvements on the property now?

A. There are.

Q. Will you please state what those improvements consist of?
70 A. There are twenty-two dwelling-houses.

Q. What is the character of them? What kind of houses are they? Are they frame or——

A. No, sir; they are brick and stone dwellings.

Q. Will you please state how much of square 53 those improvements cover?

A. They cover every bit of it, except that there are yards to all the houses but one; but the facades, the fronts—the street- are all lined with dwellings.

Q. I will ask you to state, if you know, who placed those improvements on that square?

A. I contracted with an architect in Washington to build them for me.

Q. Will you state who paid the price for building them?

A. I paid it.

Q. Can you state what the total cost of those improvements was?

A. Yes, sir.

Q. What was it?

A. Well, it may not be in round cents or dollars quite one hundred and twenty-five thousand dollars, but it was within (I guess) two hundred dollars of one hundred and twenty-five thousand dollars.

Q. Can you remember about the time when those houses were completed—the year?

A. You want me to name the very year they were built?

Q. As near as you can recall; as near as you can remember.

A. I will not swear definitely about the year. I should say those houses were built in the vicinity of six years.

Q. Six years ago?

A. Yes, sir; it may be less or more, but in that vicinity.

Q. From the time those houses were finished I wish you to state what use has been made of them, whether they have been
71 rented or not to tenants.

A. They have rented when tenants could be found; sometimes, as now, they are not all occupied.

Q. They have been generally rented?

A. They readily rent, and have been rented pretty much all the time. There are perhaps half a dozen of them that are vacant now; that is owing, I suppose, to the financial times. At all events they are vacant; they are readily rented, and have been rented ever since they have been habitable.

Q. Will you please state, if you know, who has received the rents from those houses?

A. The rents have been paid to B. H. Warner & Company, my agents.

Q. As your agents?

A. As my agents.

Q. Have they been remitted to you?

A. Yes, sir.

Q. I would like you to state whether you have received those rents as your own or for other persons.

A. I have received those as my own.

Q. I would like you to state whether at any time from the death of your wife to the present you have admitted any right, title, or interest in that property in any other person than yourself.

A. Whether I have admitted any right?

Q. Yes.

A. No, sir; I never have.

Q. How is it with reference to your children in respect to this

property? Have you ever admitted any right or title in them in this property?

A. The fee is in them, and I recognize it is their property.

Q. What is the nature of your own claim of right to it?

A. The nature of my own claim is that I have the curtesy in the land during my life, and it is my money that made the
72 improvements.

Q. Then I understand that you claim the property for your life?

A. I do.

Q. And after your life estate you admit the title to be in your children. Is that correct?

A. I do.

Q. I will ask you to state whether your wife, Mrs. Julia Dickinson Paine, left any will.

A. She did not.

Q. State, if you know, whether any person other than your wife and yourself or persons representing her or you have ever exercised any acts of ownership over this property since the death of Mr. Tayloe.

A. They never have other than that the executors exercised the right until his real estate was divided.

Q. What executors do you mean?

A. The executors of Ogle Tayloe before the division of his real estate.

Q. Are those the only persons who have exercised any control over the property, to your knowledge, since Mr. Tayloe's death?

A. The only ones, sir.

Q. I will ask you to state whether or not you are the same John W. Paine mentioned in the answer in this suit as being a defendant in several ejectment suits brought for the recovery of a part of this square.

A. I am.

Q. Did you have any knowledge of the value of real estate in the city of Washington in or about the years '68, '69, '70, and thereabouts?

A. Well, not very much knowledge.

Q. Did you have any knowledge?

A. Well, yes; some knowledge.

Q. Did you have any dealings in Washington real estate?
73 A. I have bought some real estate in Washington.

Q. Then you are not able to state what was the value of this property at that time?

A. Yes, sir; I can state. At what time?

Q. You say you have no knowledge of values at that time, '68 and '69?

A. No; I have no knowledge.

Q. Do you know the present value of square 53 and its improvements?

A. I know what I consider them worth.

Q. Will you please state what that amount is?

Mr. MACKEY: I object to the question as incompetent. The witness is not an expert, disclaiming to be an expert as to the values of real estate in Washington city.

A. I consider the ground and the buildings to be worth two hundred and fifty thousand dollars.

Mr. MACKEY: The answer is also objected to because the question is not what the witness considers the value of the property, but what its value is as matter of fact.

Q. I will ask you to state the ages of the other three defendants in this suit.

A. Shall I give the dates of their births?

Q. Very well; that will do.

A. My oldest child was born on the first of May, 1863; the second one, the next one, on the 24th of September, 1869; the remaining one on the 4th of February, 1872, just three weeks prior to the death of my wife.

Q. Did you know Mrs. Minnie Hunt Ransom?

A. No, sir.

Q. Did you know Robert Ransom, her husband?

A. No, sir.

74 Q. Do you know any of the plaintiff's in this suit?

A. I do not.

Mr. JOHNSON: I think that is all.

Cross-examination by Mr. FRANKLIN H. MACKEY:

Q. I understood you to say that prior to the erection of these twenty-two houses upon this square 53 that the property was vacant property—unoccupied?

A. Yes, sir. When the wood and coal yard was there the man may have had a wooden shanty on it for an office, like; but the man I spoke of, who occupied it to make pavements, I think, had nothing. His office was down opposite the Treasury, near Riggs & Company's bank; but when the wood yard occupied it there was coal and wood in there. He may have had a wooden shanty in there for an office. I don't know that he did have, but he may have.

Q. After the division or partition of the estate of Benjamin Ogle Tayloe how long was it before you rented the property to any one?

A. How long after the division of the property?

Q. Yes.

A. I could not say; it is too long ago.

Q. Can you approximate whether it was five, six, or ten years?

A. I rented it within ten years, surely—within ten years from the time it became my wife's; whether it was one or two, five or six years I cannot say, but I will swear that I rented it within ten years.

Q. You did not use it for any purpose until you did rent it, did you?

A. No.

Q. Are you able to say that you did not use it for three or four or five years after the property was partitioned to your wife?

A. Well, sir, I must repeat my answer. I could not
75 specify the year. I swear that I rented it within ten years, but I won't swear any nearer than that.

Q. Within ten years from this date?

A. No, sir. Your question was, How long after the division was made that I rented it. I replied that I would not swear to the year, but I would swear that I rented it within ten years.

Q. Ten years from when?

A. Ten years from the time of the division. Within ten years from the time it became my wife's property I rented it.

Q. If you rented it one month after the property was partitioned and set off to your wife that would be within ten years, so that the answer is not definite. I want to come within some reasonable period—a year, two, three, or four years.

A. I have answered your question. I would not swear how soon after the property became my wife's I rented it; but I would swear that I rented it within ten years from the time it became her property. So I can't vary that. I don't remember back twenty-five years very well.

Q. You see the vagueness of that answer. To say that you rented it within ten years might mean that you rented it a month after it was partitioned to your wife, or it might mean that you did not rent it for nine years and nine months.

A. You must take the answer just as I give it.

Q. You are unable to say with any degree of definiteness?

A. Let me repeat my answer. Your question was, How soon after the property was divided from the estate of Benjamin Ogle Tayloe—how soon after that division I rented it. I replied that I would not swear how long a time elapsed after the division that I rented it; but I would swear that I rented it within ten years. There is no use in my repeating it, and I won't vary the
76 answer.

Q. To whom did you rent it first?

A. Well, I would not swear that either; I cannot say to whom I rented it first.

Q. To how many persons have you rented it?

Mr. JOHNSON: You speak now before the houses were built?

Q. Before the houses were built, I mean.

A. I cannot say how many persons.

Q. I understood you to say that you rented it to a man——

A. (Interrupting.) For a coal and wood yard and to a man to make pavements, but I will not swear that I did not rent it to others. That is what you ask me to swear to?

Q. Yes.

A. I will not swear that.

Q. Do you know the name of this party to whom you rented it to make pavements?

A. If you would tell me a lot of men who made pavements as long ago as that perhaps I could.

Q. Barbour?

A. No; it was not Barbour. He had an office in the basement

of a building south of Riggs & Company's bank. If you would mention the name I could recall it.

Q. You say he had an office at that time near Riggs's bank?

A. I think I will not swear, but I think he had an office in the basement of a building near Riggs' bank. I don't know that I ever saw the man.

Q. Did you ever see him in the occupation of the place yourself?

A. Oh, yes; I saw that it was occupied, making this pavement.

Q. How long did he occupy it?.

A. He occupied it quite a long while—several years, I think.

Q. Two or three years?

A. I would not say how many.

Q. You would not say whether it was two or three or five
77 or six?

A. No, sir.

Q. Did the wood and coal yard man occupy before that or afterwards?

A. The wood and coal fellow, Tumelty, was the last tenant up to the time it was improved.

Q. How long after this pavement man vacated the property was it before you rented it to this wood and coal man?

A. I don't know.

Q. Could you say it was two years or three years?

A. No; I would not say the years. I will say it was several years.

Q. You are unable, I understand you to say, to state what other persons occupied this property besides this pavement man and this wood and coal man?

A. I am unable to say who occupied it besides those two.

Q. Did anybody occupy it in the interval between the time when the pavement man vacated and the wood and coal man took possession?

A. That I could not say.

Q. You did not rent it to any one in the interval?

A. I never rented it at all. My Washington agent rented it for me.

Q. Who was the agent?

A. I had two agents in Washington. First I had an old man by the name of Towles. He was the agent of Mr. Ogle Tayloe in his life, and then after the division he was my agent for quite a while. Then Towles got old and sent for me and said he was getting old and he didn't think he was doing justice in looking after the property and I had better get another agent. Then I made Thomas E. Waggaman my agent. Then I made B. H. Warner & Company the agent.

Q. The contract of rental with this pavement man and this wood and coal man was made through your agent?

A. Yes, sir.

Q. Did you ever have the title to this property examined?
78 A. To get an abstract?

Q. An abstract of title.

A. I have.
Q. Whom did you employ to make an abstract?
A. Mahlon Ashford.
Q. Did he report the title to you as perfect?
A. He did, without a cloud.
Q. Did you not at one time employ Messrs. Gordon & Gordon as your attorneys in reference to this property?
A. Never.
Q. Did you not at one time, through some attorney, endeavor to get a quitclaim from the Ransom heirs to this property?
A Never; never heard of the Ransoms until this suit was begun or the former suits.
Q. You have never resided in Washington within the past ten years?
A. What do you call residing?
Q. Making Washington your home.
A. Never.
Q. How long did this wood and coal man occupy this property before you began to build upon it?
A. I could not say.
Q. You can't approximate to the time—one, two, or three years?
A. How long he occupied it prior to my improving it?
Q. Yes.
A. No, no; I could not say that.
Q. Can you state how long after he vacated the property it was before you began to make the improvements?
A. Very soon. I think I hurried him off; tried to.
Q. What do you mean by "very soon"? That is a comparative term. How long after this wood and coal man vacated the property was it before you began to make your improvements?
A. Soon.
Q. What do you mean by that—a year?
A. I could not say.
79 Q. Do you mean six months?
A. I could not say.
Q. Do you mean one month?
A. No; I did not begin to build within one month after he left.
Q. Well, two months?
A. No; I would not locate it beyond a month. It is too long ago for me to remember.
Q. I will make another effort to get a little more definite answer to my other question. Would you say that the property remained vacant two years after it was set off to your wife before you rented it to this pavement man?
A. That I could not say. You asked me once and I told you I would swear it was within ten years, but I would not swear any nearer.
Q. I understand you, but I want to get it a little more definite than ten years. I have tried to explain to you that "within ten years" may mean that you rented it a month after it was set off to your wife or that you did not rent it until nine years and nine

months after. Now, I ask you whether or not you are able to say that that property was rented to this pavement man within five years after the property was set off to Mrs. Paine.

A. I will not say.

Mr. MACKEY: That is all.

Redirect examination by Mr. JOHNSON:

Q. Can you remember whether or not this property was rented at any time during your wife's lifetime?

A. No; I do not think it was.

Q. You have stated that you cannot recall any other tenants than the man engaged in the paving business and the wood and coal man; can you say that there were no other tenants?

A. No, sir; I cannot say that.

80 Q. Do you know the first name of Mr. Towles?

A. James; James Towles.

Q. Do you know whether he is now living or not?

A. Oh, he is dead. He has a son (or had some time ago) in the furniture business.

Q. H. O. Towles?

A. I think that is James Towles' son. I would not swear that he is the son, but I think he is.

Q. You think H. O. Towles, in the furniture business, is the son of this man?

A. I think so.

Q. You have said several times, in response to questions of Mr. Mackey, that you would not swear positively to certain things. Do you mean by that that you would not answer his questions or that you could not distinctly recall?

A. That is what I mean—that I could not distinctly recall.

Q. Have you any objection to answering any of his questions as to which you can remember?

A. None whatever. I am entirely willing to give him any information I have.

Q. You stated that Mr. Towles, Mr. Waggaman, and Warner & Company had acted as agents for you in the renting of this property. Did they act as your agents in that order—that is, Towles first, Waggaman next, and then Warner & Company?

A. Yes, sir; that is the order.

Q. Who are the agents in charge of it now?

A. B. H. Warner & Company.

Q. I will ask you to state (a matter that I forgot on direct examination) whether the cost of building these houses was paid in cash or whether any of it is secured in any way on the property.

A. No, sir; it was paid in cash. There is not a lien on the property.

81 Recross-examination by Mr. MACKEY:

Q. Neither you nor your wife ever occupied this property yourselves until you began to improve it with these twenty-two buildings?

A. Do you mean whether I ever lived there—on the ground?

Q. Yes.

A. I never lived on the ground a moment.

Q. You never occupied it yourself?

A. No, sir.

Q. Nor did your wife?

A. No, sir.

Q. Nor your children?

A. No, sir.

(By Mr. JOHNSON:)

Q. Did any one else occupy it except the tenants of yours?

A. No, sir.

Q. Do you know that of your own knowledge—that is to say, the answer that you have just given Mr. Johnson as to the occupancy of this property by other persons than your tenants? Do you know of your own knowledge whether other people have or have not occupied that property?

A. Yes, sir; I do. I keep pretty good run of my Washington property. I have not visited square 53 every day since '69, but there has never been a tenant there but what I was cognizant of his being there.

Q. That is, on information from your agents?

A. Information of my agents.

Q. But it is possible that other people may have occupied this square during your absence from Washington and you not know it?

A. No, sir; it is not possible.

Q. How would you know it?

A. Either by my eyes or by my agents' information.

Q. And if you were not there your agents would have informed you?

A. The way that everybody else gets information—either by their eyes or from others.

82–84 Q. Is it not a fact that you have spent very little of your time in Washington during the past ten or fifteen years?

A. I have not been there a great deal of my time.

Examination concluded.

JNO. W. PAINE.

* * * * * * *

85 FANNIE MARIA GIBSON sworn.

Direct examination.

By W. G. JOHNSON, Esq.:

Q. Mrs. Gibson, are you the lady known as Fannie Hunt Gibson?
A. I am.
Q. Did you know Mrs. Minnie Hunt Ransom?
A. Yes, sir.
Q. Was she related to you?
A. Yes, sir; she was my only sister.
Q. Did you know her husband?
A. Very well.
Q. What was his name?
A. Robert Ransom.
Q. Did you know G. Gibson Hunt, of the United States Army?
A. Yes, sir.
Q. What relation is he?
A. My brother.
86 Q. Is he living?
A. Yes, sir.
Q. Where is he at present?
A. He is an officer of the army and is located at Fort Wingate, New Mexico.
Q. At the time of your sister's marriage to Mr. Ransom, what was his occupation?
A. He was an officer of the United States Army.
Q. Do you know where Mr. and Mrs. Ranson were, in what part of the United States, in the spring of 1859?
A. I think in Carlisle.
Q. Do you know where they went from here?
A. They went from here to Fort Lyon.
Q. Where was that?
A. I don't know where Fort Lyon was; it was somewhere in the northwestern part of the United States.
Q. Was it near or far from this section of the country?
A. Quite remote; very much more so than it would be now, as they did not have at that time the railroad facilities.
Q. Do you know Walter S. Cox, now justice of the supreme court?
A. Very well.
Q. How long have you known him?
A. All my life.
Q. Is he related to you?
A. Distant cousins.
Q. Do you know what were the personal relations between Judge Cox and your sister, Mrs. Ranson, during her lifetime?
A. Always most cordial.
87 Q. What were your relations with him?
A. Very cordial.
Q. Was he well acquainted with your sister and brother?
A. Very well.

Q. What were your relations as to agreeableness and cordiality with your sister, Mrs. Ranson?

A. Always very affectionate and cordial.

Q. Did you at any time have anything to do with your sister's, Mrs. Ranson's, money affairs in any way?

By Mr. MACKEY: Objected to as irrelevant.

A. I was always in the habit of spending money for her and doing shopping for her and her family.

Q. Can you state, Mrs. Gibson, over what period of time you attended to that sort of business for Mrs. Ranson?

A. During her single and a greater part of her married life.

Q. How long was it from the spring of 1859 to the close of the war and after?

A. Possibly I actually attended to more during the war. I was in the habit of sending things through the line to her. All my relatives were in the South, and I was in the *bait* of sending things quite frequently to my sister. General Ranson was one of the last officers to go out. I sent things during the war and after the war was over.

Q. During that time did you keep up a correspondence with your sister?

A. Constantly.

Q. You say you sent things to her and did shopping for her. Did you handle money for her?

88 A. Yes, sir; very frequently.

Q. I will show you some letters. They are marked Exhibit- W. S. C. No. 4, W. S. C. No. 5, W. S. C. No. 6, W. S. C. No. 7, W. S. C. No. 8, W. S. C. No. 9. (Letters shown witness.) I will ask you to look at these letters and state in whose handwriting they are.

—. I know the handwriting very well. They are all in the handwriting of Judge Walter Cox.

Q. To whom are they addressed?

By Mr. MACKEY: Objected to; the letters will show for themselves.

A. All addressed to myself.

Q. I will ask you to state whether or not the money mentioned in these letters of Judge Cox as belonging to your sister, Mrs. Ranson, was paid to you by Judge Cox.

By Mr. MACKEY: Objected to on the ground of irrelevancy and immateriality.

A. I am sure he did.

Q. I will ask you to state whether or not you paid that money over to Mrs. Ransom or for her account in any way.

By Mr. MACKEY: Objected to as immaterial and irrelevant.

A. It was either paid over to her or spent for her at her direction.

Q. By whom?
A. By myself, as well as I can possibly remember.
Q. You stated that you had expended money for your sister, Mrs. Ransom, for a considerable period of her whole life. Did
89 you keep any memorandum of these expenses?
A. None whatever except just at the moment.
Q. Did you keep these memoranda?
A. No, sir.
Q. Whatever became of them?
A. I suppose they were destroyed.
Q. When did you- sister die, what year?
A. I cannot say positively.
Q. Was it after the war?
A. Several years after the war.
Q. When did you first see your sister after the war?
A. I met her in Richmond immediately after the war, in the year 1865 She died in 1879 or 1880; I am not positive which, as I have a poor memory for dates.
Q. Had you seen her soon after that?
A. I returned with her to North Carolina. I think she was in Washington for two or three weeks, and then I returned with her to North Carolina.
Q. Did you know her husband well?
A. Very well..
Q. What were your personal relations with him during your sister's lifetime?
A. Always very cordial.
Q. Did you meet him after the war?
A. Yes, sir.
Q. Did these friendly relations continue?
A. Aalways.
Q. I will show you, Mrs. Gibson, a paper which has been
90 offered in evidence in this cause, marked Exhibit W. S. C. No. 3 (paper shown witness by counsel), and ask you to look at the signature G. G. Hunt, and state if you know in whose hand-writing that is.
A. It is in the handwriting of my brother, Colonel G. Gibson Hunt.
Q. Did you ever see your brother write?
A. Repeatedly.
Q. Did you ever correspond with him?
A. Constantly.
Q. Are you familiar with his handwriting?
A. Perfectly.
Q. Mrs. Gibson, I will now show you a paper which has been offered in evidence in this cause, marked Exhibit W. S. C. No. 2 (paper shown witness by counsel), and ask you first if you have ever seen your brother-in-law, Robert Ransom, write.
A. Very often.
Q. Did you ever correspond with him?
A. Constantly.

Q. Do you know his handwriting?
A. Perfectly.
Q. Did you ever see your sister, Mrs. Ransom, write?
A. Frequently.
Q. Have you corresponded with her?
A. Yes, sir.
Q. Do you know her handwriting?
A. Yes, sir
Q. I will ask you now to look at the signature of Robert Ransom, Jr., and M. H. Ransom, on this Exhibit W. S. C. No. 2, and state whether or not the signature of Robert Ransom, Jr., is
91 the signature of your brother-in-law.
A. Most assuredly.
Q. And the signature M. H. Ransom—signature of your sister?
A. I think it is.
Q. I will ask you now to look at the paper attached to Exhibit W. S. C. No. 2, which is in evidence in this cause and is marked W. S. C. No. 1, and state in whose handwriting the body of that paper is.
A. In the handwriting of Judge Cox.
Q. I will ask you to look at the signature of G. Gibson Hunt on W. S. C. No. 1 and state if you know whose handwriting that is.
A. That is my brother's handwriting.
Q. Did you know A. L. Sponsler?
A. Very well.
Q. Do you know whether or not he was acquainted with your sister and your brother-in-law, Mr. and Mrs. Ransom?
A. He knew them very well.
Q. Did you know President Judge James H. Graham, of the 9th judicial district of Pennsylvania?
A. I knew him from sight; just a speaking acquaintance.
Q. Do you know whether or not he knew your sister, Mrs. Ransom, and her husband?
A. I really do not know.
Q. What was his reputation and character as a man of probity?
A. Very good.

By Mr. MACKEY: This question is objected to as immaterial and not the proper method to prove character.

Q. I forgot to ask you whether or not you received your
92 brother's share of the money mentioned in Judge Cox's letters.
A. It was paid to me. My husband invested it.
Q. Did you receive your own share?
A. Most certainly.
Q. Do you know whether or not Judge Cox was a professional man from 1859 to 1865?
A. He was a lawyer practicing at the bar.
Q. Where?
A. In Washington city and in Georgetown. I think he was residing in Georgetown then.

Q. Was that fact known to your sister, Mrs. Ransom, and her husband?

By Mr. MACKEY: Question objected to as irrelevant.

A. Perfectly.

Q. Do you know what were the personal relations between your sister, Mrs. Ransom, and your brother, Colonel Gibson Hunt, in the years 1859, 1860, and on through?

By Mr. MACKEY: Question objected to as irrelevant.

A. Most amicable and affectionate.

Q. Did they remain so?

A. Yes, sir; throughout their lives.

Cross-examination by Mr. MACKEY:

Q. Do you remember, Mrs. Gibson, when this money that you say Judge Cox sent you was received by you?

A. No, sir; I do not.

Q. Was it during the war?

A. It was just at the close of the war, I think.

Q. Do you remember what the amount was?

A. Something over seven hundred dollars, I think.

93 Q. What did you say you did with that money?

A. My sister's portion?

Q. Yes.

A. It was all expended at her direction or turned over to her.

Q. She was where at that time?

A. Warrenton, North Carolina.

Q. Did you send any to her during the war?

A. I don't think so.

Q. Did you have any communication with your sister with regard to this property during the war?

A. I have no recollection of it at all. I know there never was any question about it.

Q. I don't mean with regard to the seven hundred dollars; I mean in regard to the property.

A. I never spoke to her on the subject. I do remember that the property was sold at the suggestion of General Ransom and for their benefit.

Q. That was during the war?

A. Before the end of the war; it was sold in good faith. It was sold more specially for the benefit of General Ransom's family. It was unimproved property, and the taxes were eating it up.

Q. It was, then, just because you- family supposed at that time that General Ransom and his wife, Mrs. M. Ransom, were in need of this money that the property was sold?

A. Well, yes. I think his expenses were very high and he wanted money.

94 Q. At that time he was an officer in the Confederate army?

A. I am talking of the time the power of attorney was given.

Q. At the time it was sold he was an officer in the Confederate army?

A. Yes, sir; at the time the power of attorney was given he was an offier in the regular army.

Q. Do you know when Mrs. Ransom first heard this property was sold?

A. I do not remember dates at all.

FANNIE M. GIBSON.

JOHN HAYS, Esq., sworn.

Direct examination.

By W. G. JOHNSON, Esq.:

Q. What is your business?

A. Practicing lawyer.

Q. Where?

A. Here in Carlisle, Pa.

Q. How long have you lived here?

A. I have lived here since I was born.

Q. How long ago was that?

A. Fifty-odd years.

Q. I show you a paper which has been offered in evidence in this cause and which is marked W. S. C. No. 2 and ask you to look at it and ask you to state if you know in whose handwriting the body of that paper is.

A. In the handwriting of A. L. Sponsler.

Q. Who was he?

95 A. A justice of the peace and notary public and real-estate agent.

Q. Where?

A. Carlisle, Pa.

Q. Did you ever see him write?

A. Very often.

Q. Have you had any connection with him in his business?

A. I knew him intimately for twenty years. I knew him for thirty years during his lifetime and was his executor.

Q. I will ask you to look at the name signed to this paper (handing paper to witness) as attesting witness, A. L. Sponsler, and state if you know his signature.

A. It is the handwriting of A. L. Sponsler.

Q. Do you know the reputation of Mr. Sponsler in this community for probity.

By Mr. MACKEY: Question objected to as incompetent and also because the reputation and character is not in question, and if it were it is not the proper way to prove it.

A. The very best.

Q. Did you know President Judge J. H. Graham?

A. Yes, sir.

Q. Did you ever see him write?

A. Very often.
Q. Do you know his signature?
A. I do. That is his signature as witness to this paper.
Q. Will you look at the signature on the end of the certificate and acknowledgement and state if that is his?
A. Yes, sir; that is his signature.
96 Q. What was he on the 24th May, 1859?
A. He was president judge of this judicial district—the 9th Pennsylvania—comprising Cumberland, Perry, and Juniata counties.
Q. Do you know what was his reputation in this community for probity?
A. He stood very high. He was twenty years president judge.
Q. Did you know Phillip Quigley at that time—May, 1859?
A. Yes, sir.
Q. What office did he occupy?
A. Without looking at that paper my recollection is he was deputy prothonotary.
Q. Did you ever see him write?
A. Yes, sir.
Q. Do you know his signature?
A. I do.
Q. Will you look at the signature of Phillip Quigley on that certificate and state whether that is his?
A. It is.
Q. You have stated that Mr. Sponsler is dead and that you are his executor. Do you know whether Judge Graham is living or dead?
A. Dead.
Q. How long has he been dead?
A. I would suppose at first blush that Judge Graham had been dead about ten years.
Q. Is Mr. Quigley living or dead?
A. He is dead—dead a good many years ago.

Cross-examination by Mr. MACKEY:

Q. Were you of age May, 1859?
97 A. Yes, sir; I was born in 1837, and in May, 1859, I was over 22.
Q. The familiarity which you have with the signatures of these gentlemen occurred since 1859?
A. Both before and after. I tried some cases before Mr. Sponsler before I was admitted to practice.
Q. Did you know the signatures of these gentlemen in 1859? Could you have identified them at that time?
A. Yes, sir; unquestionably. Judge Graham was a distant relation, and I have known him for many years prior to that time. I had known Mr. Sponsler quite a number of years before that time.

JOHN HAYS.

Hon. R. M. HENDERSON sworn.

Direct examination.

By W. G. JOHNSON, Esq.:

Q. Will you please state your occupation and residence?
A. Lawyer; Carlisle, Pennsylvania.
Q. How long have you resided in Carlisle?
A. I was born within a mile of Carlisle, and would think I have lived in Carlisle since 1853, except probably eight years that I was a resident of the Dauphin district. Practically I have lived here all my lifetime.
Q. Were you living in Carlisle in the spring of 1859?
A. Yes, sir.
Q. Did you know A. L. Sponsler?
A. Very well, sir.
Q. Did you know President Judge J. H. Graham?
A. Very well.
98 Q. Do you know Phillip Quigley?
A. Yes, sir.
Q. Did you know them at that time?
A. Yes, sir.
Q. Had you at or before the spring of 1859 ever seen these gentlemen write?
A. Both before and after, frequently.
Q. Did you know the signatures of these gentlemen?
A. Yes, sir.
Q. I will ask you to look at a paper porporting to be the signature of witness to Exhibit W. S. C. No. 2, in evidence in this cause, and state in whose handwriting they are.
A. J. H. Graham is in the handwriting of Judge Graham; A. L. Sponsler is in the handwriting of A. L. Sponsler.
Q. Look at what purports to be the signature of Phillip Quigley, prothonotary, and state whose signature.
A. I should say the handwriting of Phillip Quigley.
Q. Further on there is the name of J. H. Graham; whose signature is that?
A. The signature of James H. Graham, forme-ly the president judge of this district.
Q. Did you know Judge Graham and Mr. Sponsler well?
A. Yes, sir; very well.
Q. Do you know what their reputation for probity of character was in the community in which they lived?
A. Yes, sir; both were men of unquestionable character.

By Mr. MACKEY: This is objected to as not the proper method of proving character.

99–102 Q. Did you know Robert Ransom, Jr.?
A. Yes, sir; I knew him when he was an officer here at the barracks.
Q. Where were the barracks?

A. Partly in the borough, partly in the adjoining township.

Q. Did you know his wife?

A. Yes, sir; I did.

Q. Do you know whether or not Judge Graham and Mr. Sponsler were acquainted with them?

A. I should suppose so. I am satisfied Judge Graham was acquainted with Mrs. Ransom. Miss Hunt visited here very frequently before their marriage and no doubt visited with Judge Graham's daughters in the same society. She visited at Judge Gibson's at the time.

Q. Was that Judge Bannister Gibson?

A. Yes, sir.

Q. Do you know whether or not Judge Graham and Mr. Sponsler had opportunities of knowing them?

A. They certainly had. They were both here sometimes. The one visited here quite frequently.

R. M. HENDERSON.

* * * * * * *

103 WASHINGTON, D. C., *April* 23, 1894—1 o'clock p. m.

Met pursuant to agreement.

Present: Franklin H. Mackey, Esq., solicitor for complainants; William G. Johnson, Esquire, solicitor for defendants; also the examiner, Oscar Luckett, and Judge WALTER S. COX, an associate justice of the supreme court of the District of Columbia, who, being produced as a witness, of lawful age, for and on behalf of the defendants, and being first duly sworn, did depose and say as follows:

Direct examination.

By Mr. JOHNSON:

Q. Judge Cox, you were residing in the District of Columbia prior to 1865 and during that time continuously up to the present time?

A. Yes, sir.

Q. Did you know Minnie Huntt Ransom, the wife of Robert Ransom?

A. Very well.

Q. Will you please state whose daughter she was?

A. She and Mrs. Gibson and Gibson Huntt were children of a former Dr. Huntt, of Washington, quite well known in his day; I think he died, though, before I grew up. They were very distant connections of mine.

Q. Did you also know Mrs. Fannie Gibson, the sister of Mrs. Ransom?

A. Oh, yes.

104 Q. And did you know George Gibson Huntt—now Colonel Huntt?

A. Yes. These children were taken charge of by an old gentleman, George Gibson, who was quartermaster general, after the death of Dr. Huntt, whose intimate friend he was, and he brought

the children up and educated them. Gibson Huntt was named after him, and Fannie Huntt afterward married Colonel Gibson, of the army.

Q. How well were you acquainted with them from, say, 1860 up to 1865 or 1866?

A. I knew them very intimately. Fannie Huntt lived at my uncle's, Richard Smith.

Q. That is the one who is now Mrs. Gibson?

A. Yes, sir. Minnie Huntt, who married Ransom, was at one time in the convent at Georgetown. She lived there for several years, and she also lived at my house.

Q. Prior to her marriage to Mr. Ransom?

A. Yes.

Q. How well did you know Colonel George Gibson Huntt?

A. I did not know Gibson so well as the others; I saw very little of him, but knew him.

Q. I will ask you to state, Judge Cox, whether Mrs. Ransom, Mrs. Gibson, and Colonel Gibson Huntt were persons of probity, integrity, and of high character.

A. Oh, yes.

Q. Will you please look at these two papers which I hand you (handing papers to witness) and state in whose handwriting the body of these papers is?

A. My handwriting.

105 Q. Will you please state what they are?

A. One is a conveyance by George Gibson Huntt of his interest in certain lots of ground to Benjamin Ogle Tayloe; the other is a contract by him as attorney for Mr. and Mrs. Ransom for the conveyance of Mrs. Minnie Ransom's interest in the same property to Tayloe. Attached to that contract is another paper executed by George Gibson Huntt——

Mr. MACKEY, interrupting: Mr. Johnson, don't you think the papers ought to speak for themselves? Are you going to put them in evidence? Let me see them.

Mr. JOHNSON: Yes; they will be put in evidence.

The WITNESS, continuing: To sell to Benjamin Ogle Tayloe is another paper purporting to be signed by R. Ransom, Jr., and M. H. Ransom.

Q. I will ask you to look at that paper and state if you know in whose handwritng the body of it is, and if you know these signatures (indicating).

A. No; I do not know in whose handwriting the body is. I never knew young Ransom's signature. He was then lieutenant. I knew Minnie's, though, but I have forgotten all about it.

Q. Can you say whether or not that is her signature?

A. I cannot say that from my recollection. I only know in my letters I allude to power of attorney from Mr. and Mrs. Ransom. I mean in my letters to Mrs. Gibson. Let me see which letter it is.

Q. I observe, Judge Cox, in the paper which you identify as in your handwriting and which purports to be executed by George

Gibson Huntt, that that recites, among other things, the
106 following: "I, George Gibson Huntt, by virtue of the annexed power of attorney to me from R. R. Ransom, Jr., and Mary Ransom, his wife," and ask you to look at the two papers and state whether, upon reflection, you can say that that paper purporting to be signed by Robert Ransom and M. H. Ransom is the power of attorney referred to in the instrument written by you.

A. I have no doubt it is the same paper.

Mr. JOHNSON: I now offer in evidence in behalf of the defendants both of the papers which have been identified by Judge Cox, including the paper purporting to be a power of attorney annexed to one of them. The said papers are marked by the examiner for identification "Defendants' Exhibits W. S. C. Nos. 1, 2, and 3," respectively.

Mr. MACKEY, solicitor for complainants: I object to these papers on the ground that they are not sufficiently proven; that the alleged power of attorney by Robert Ransom, Jr., and wife to George Gibson Huntt, annexed to the paper purporting to be an execution of that power, is not sufficiently identified, and also because the alleged execution of the power shows on its face that it is not an execution of the power, and also the paper purporting to be a deed personally from George Gibson Huntt to Benjamin Ogle Tayloe has not been sufficiently proven—the execution thereof has not been sufficiently proven.

The WITNESS: On the question of the identity of that power of attorney perhaps I might make further statement. In my letter to Mrs. Gibson Huntt, dated November 26th, 1864——

Mr. MACKEY: Counsel for the complainants objects to the reading of this paper as not evidence, it being a letter to a third
107 party not a party to this suit.

The WITNESS, continuing: I say, "Mr. Tayloe has paid me Gibson's share in a check which I enclose endorsed to your order, and has agreed to pay Minnie's share as soon as Gibson will execute a formal contract of sale in pursuance of the power of attorney from her and her husband. I enclose a paper attached to the power of attorney which he should execute in the same way as his deed, and as soon as I receive it I will send you Minnie's share." That shows that I sent the paper for him to execute, and if they came back together that is the identical power of attorney which I had.

Q. Judge Cox, at the time that you wrote this paper for execution by George Gibson Huntt as the attorney of Mr. and Mrs. Ransom, in what profession were you engaged?

A. I was than a member of the bar.

Q. Were you practicing law here?

A. Yes.

Q. Did you at or about that time act as the counsel of Mrs. Fannie Huntt Gibson, of George Gibson Huntt, and of Minnie Huntt Ransom?

A. I did, at their request, perhaps I should say at the immediate

request of Mrs. Gibson, effect a sale of some property for them that they owned in Washington and received the money and remitted it to Mrs. Gibson. Apart from my letters I would not remember the date, property, or purchaser.

Q. Did you sell to Benjamin Ogle Tayloe square fifty-three?

A. I sold him the property to which these letters of mine
108 refer. I do not remember the number of the square or the property described in these papers prepared by me. I do not remember the number of square and lots.

Q. Will you look again at this paper, which you state is in your handwriting, executed by George Gibson Huntt, and state from that whether or not you sold square fifty-three?

A. Looking at the paper prepared by me for execution by George Gibson Huntt, as attorney for Mr. and Mrs. Ransom, and also the conveyance to be executed by him, I can testify that square fifty-three was a part of the property which I sold for them.

Q. Will you please look at these papers (handing papers to witness) and state in whose handwriting they are and what they are?

A. These papers are five letters written by me to Mrs. Fannie Gibson in relation to the sale of the property described in the papers just now referred to.

Mr. JOHNSON, solicitor for defendants: I offer these letters in evidence in behalf of the defendants. The same are marked by the examiner for identification "Defendants' Exhibits W. S. C. Nos. 4, 5, 6, 7, 8, and 9" respectively.

Mr. MACKEY, solicitor for complainants: The offering of these letters in evidence and the letters are objected to on the ground that they are *res inter alios acta*.

Q. I will ask you, Judge Cox, to state whether in the sales which you made to Benjamin Ogle Tayloe and the sale of square fifty-three the purchase-money was paid by Benjamin Ogle Tayloe.

A. It was.

109 Q. To whom was it paid?

A. Paid to me.

Q. Was that sale made by you to Benjamin Ogle Tayloe a fair and *bona fide* sale in every respect?

A. I think it was.

Q. Was the price obtained a fair value for the property at that time?

A. Well, I thought so. It was the best I could get.

Mr. MACKEY, solicitor for the complainants: I object to the question and answer as irrelevant, the question of the sufficiency of the price not being in issue here at all.

Q. Will you please state, Judge Cox, what you did with the purchase-money paid to you by Benjamin Ogle Tayloe?

Mr. MACKEY, solicitor for complainants: All this testimony in relation to the purchase price of this property, the amount and what was done with it, is objected to as irrelevant and immaterial on the ground that it, is not in issue in this case, whether the property was

paid for or not or whether Mrs. Ransom received the purchase-money or her share or any part of it. It is immaterial whether she did or did not.

The WITNESS: It appears from my letter of July 27, 1864, that on that day I sent to Mrs. Gibson a draft for her share of the money of the proceeds of sale. It appears in my letter of November 26, 1864, that on that day I sent to Mrs. Gibson her brother's share of the proceeds, and, furthermore, by my letter of January 7, 1865, that I sent to Mrs. Gibson on that day her sister Minnie Ransom's share of the proceeds.

Q. At the time of January 7, 1865, when you sent to Mrs.
110 Gibson Mrs. Ransom's share of the purchase-money, did you know where Mrs. Ransom was?

A. I think she was at the South, and had not come up to the North. Her husband was in the Confederate service.

Q. And she was within the territory then in the occupation of the Confederate government?

A. Yes.

Q. Where was Mrs. Gibson at that time?

A. She was at Wilkes Barre, in Pennsylvania; my letters are addressed to her there.

Q. These letters, Judge Cox, which you have identified as being in your handwriting and which you have used for the purpose of refreshing your recollection of these matters, are they original letters sent to Mrs. Gibson or copies?

A. They are original letters. Mr. Appleby brought them to me, having procured them from Mrs. Gibson, as I understood.

Q. Will you please state when it was these letters were brought to you by Mr. Appleby or about when?

A. They seem to have been enclosed in an envelope directed to me by Mrs. Gibson. I may have been wrong in stating that Mr. Appleby brought them to me; they may have been sent to me by Mrs. Gibson in that envelope. I cannot see the postmark.

Q. Can you approximate it from your recollection?

A. No; I cannot. It was in connection with this controversy.

Q. Was it since the litigation?

A. Yes; either since the suit began or suit was threatened; some time within the last two or three years. I cannot say certainly whether Appleby brought them to me or whether they were
111 forwarded by Mrs. Gibson; I think the latter, from finding them in this envelope.

Q. Do you know, Judge Cox, what was the cause for Mr. and Mrs. Ransom, in 1859, making the power of attorney to Mrs. Ransom's brother?

Mr. MACKEY, solicitor for complainants: I object to the question as irrelevant. If the power of attorney was made it is immaterial what the occasion was, and if no power of attorney was made it is immaterial.

The WITNESS: I do not remember the exact date of Mrs. Ran-

som's marriage. Mr. Ransom was then in the United States Army. He did not live here, and I think was stationed in the West—probably he was in the cavalry—and it was probably with a view of an expected absence from the District. Whether it was that—I think it must have been that; it was too early then to anticipate the war. I think because he was in the Government service and expected to be absent from Washington.

Q. Did you ever see Mrs. Ransom at any time after January, 1865?

A. Yes.

Q. Did you ever see her husband?

A. No; she came here after the war was over in search of employment.

Q. She did or he?

A. She. Well, in the first place, to ask for his pardon, I believe—I do not remember now—and to endeavor to get some employment for him or herself. I saw her, I am sure.

Q. Were your relations with Mrs. Ransom always pleasant?

A. Yes.

Q. Was there ever any reference to the subject of this
112 sale by her to you or you to her?

Mr. MACKEY, solicitor for complainants: Question objected to as irrelevant and immaterial.

A. I have no recollection at all.

Q. Have you ever seen George Gibson Huntt since then?

A. Yes; one summer he occupied Judge Nott's house, two doors from me; I saw him then.

Q. How recently was that?

A. It must have been twelve years ago or longer.

Q. Did either Mrs. Ransom or her husband in their lifetime make any objection or complaint to you of the sale of this property or dispute the validity of that transaction?

Mr. MACKEY, solicitor for complainants: Question objected to as immaterial and irrelevant because it appears that Mrs. Ransom was at that time a *feme covert*.

The WITNESS: No.

Mr. JOHNSON: I believe that is all, Judge Cox.

Cross-examination.

By Mr. MACKEY:

Q. I only want to ask you one or two questions now; I want to read these letters and some questions may grow out of them, but I won't put you to this trouble now. This power of attorney—the alleged power of attorney which has been offered in evidence here—have you any recollection of that paper independent of the paper itself?

A. No—that is, I do not recollect independent of seeing the papers and seeing my allusions to it in my letters.

Q. Mr. Ransom, the husband of Mrs. Ransom, I believe you stated, was in the Confederate service; he was an officer during the war?

113 A. Yes.

Mr. MACKEY: That is all I can ask today and until I read these letters; if I desire to ask anything further we will consult the Judge's convenience.

WALTER S. COX.

Subscribed and sworn to before me this 20th day of October, 1894.

OSCAR LUCKETT, *Examiner.*

WASHINGTON, D. C., *May* 26, '94.

Mr. Mackey, solicitor for complainants, announces that he has no further questions to ask of the preceding witness, Judge Cox.

OSCAR LUCKETT, *Examiner.*

114 And I further certify that at a subsequent session, held pursuant to agreement of counsel, the followings proceedings were had:

WASHINGTON, D. C., *October* 19, 1894—2 o'clock p. m.

Met, pursuant to agreement, at office of William G. Johnson, Esquire, in the Fendall law building, 344 D street N. W.

Present: Franklin H. Mackey, Esquire, solicitor for complainants; William G. Johnson, Esquire, solicitor for the defendants, and Oscar Luckett, the examiner.

Whereupon the following proceedings took place:

Mr. JOHNSON, solicitor for the defendants: I here offer in evidence and will read at the hearing of this case the record and proceedings in the case of Ransom *vs.* Paine, No. 29908, docket 34 of the law dockets of this court.

Mr. MACKEY, solicitor for the complainants: I object to the introduction of this record and will object to the reading of it at the hearing on the ground that the same is irrelevant and immaterial to any of the issues in this case.

Mr. JOHNSON, solicitor for the defendants: I here offer in evidence and will read at the hearing the record and proceedings in the case of Williams *et al.* against Paine *et al.*, No. 31641, docket 36 of the law dockets of this court.

Mr. MACKEY, solicitor for complainants: I object to the introduction of this record and will object to the reading of it at the

115 hearing on the ground that the same is irrelevant and immaterial to any of the issues in this case.

Mr. JOHNSON, solicitor for defendants: I now offer in evidence and will read at the hearing of this case the record and proceedings in the case of Williams *et al. vs.* Paine *et al.*, No. 32845, docket 37 of the law dockets of this court.

Mr. MACKEY, solicitor for the complainants: I object to the intro-

duction of this record and will object to the reading of it at the hearing on the ground that the same is irrelevant and immaterial to any of the issues in this case.

Mr. JOHNSON, solicitor for the defendants: I now offer in evidence a certified copy of the deed from the corporation of Washington to Benjamin Ogle Tayloe, dated June 20, 1864, recorded June 21, 1864, in Liber N. C. T. 37, folio 138, of the land records for the District of Columbia, and will read the same at the hearing of this case. (NOTE.—The certified copy of the deed last above mentioned is marked by the examiner for identification Defendants' Exhibit No. 10.)

Mr. MACKEY, solicitor for the complainants: I object to the introduction of the above deed and will object to the reading of it at the hearing on the ground that the same is irrelevant and immaterial to any of the issues in this case.

Mr. JOHNSON, solicitor for the defendants: I also offer in evidence and will read at the hearing of this case certified copy of the last will and testament of Benjamin Ogle Tayloe, dated July 116–124 21, 1856, and the last codicil thereto, dated November 19, 1867, both probated July 11, 1868, and recorded in Will Book 11, folio 119, of the records of the office of the register of wills for the District of Columbia. (NOTE.—The certified copy of the will and codicil last above mentioned is marked by the examiner for identification Defendants' Exhibit No. 11.)

Mr. MACKEY, solicitor for complainants: I object to the introduction of the above will and codicil and will object to the reading of the same at the hearing on the ground that they are immaterial and irrelevant to any of the issues in this case.

Mr. JOHNSON, solicitor for defendants: I now offer in evidence and will read at the hearing of this case certified copy of a deed from Phœbe W. Tayloe, Eugenia P. Warren *et vir*, and E. T. Tayloe to Julia Dickinson Paine, dated November 17, 1870, recorded December 13, 1870, in Liber 633, folio 278, of the land records for the District of Columbia. (NOTE.—The certified copy of the deed last above mentioned is marked by the examiner for identification Defendants' Exhibit No. 12.)

Mr. MACKEY, solicitor for complainants: I object to the introduction of the above deed and will object to the reading of it at the hearing on the ground that the same is irrelevant and immaterial to any of the issues in this case.

Thereupon an adjournment was had without day.

OSCAR LUCKETT, *Examiner.*

* * * * * * *

125 EXHIBIT W. S. C. No. 4.

Filed October 27, 1894.

DEAR FANNIE: Mr. Tayloe has furnished me a statement showing—

Payment of taxes by him amounting to.....	$199 27
Which deducted from.....	2,500
Leaves a balc. of.....	$2,300 73

Each share of this—one-third—would be $766.91. I thought he would pay one-half to you on receiving your deed & the balc. to Gibson; but he thought it better, and he is perhaps right, to pay each one of you his or her share on receiving the deed from each. He has therefore paid me your share and given me an authority to Mr. Riggs to pay the rest on receiving the deed. This will relieve you of any responsibility as to Minnie's share. I suppose you would be rather embarrassed about disposing of it, and she can do what she pleases with it when the war is over. I altered the recital in the deed as to the amount received. I have not yet received Gibson's deed. When it arrives I will get his share and dispose of it as he directs. I have paid $25 out of yours to the agent who negotiated the sale and send you a draft for the balc., $741.91, on New York, payl. to Capt. Gibson.

I have been much distressed at hearing very bad accounts from Clem. about his health & am about to write to him to come home.

Remember me to Capt. Gibson.

Yours affect-ly, WALTER S. COX.

July 27, 1864.

Mrs. Fannie M. Gibson, care Capt. Geo. Gibson, 35 Sunbury Str., Boston.

126 EXHIBIT W. S. C. No. 6.

Filed October 27, 1894.

DEAR FANNIE: Mr. Tayloe has paid me Gibson's share in a check, which I enclose, endorsed to your order, and has agreed to pay Minnie's share as soon as Gibson will execute a formal contract of sale, in pursuance of the power of attorney from her & her husband.

I enclose a paper attached to the power of attorney which he should execute in the same way as his deed, and as soon as I receive it I will send you Minnie's share.

Yours affect-ly, W. S. COX.

Nov. 26, 1864.

Mrs. Fannie H. Gibson, present.

127 EXHIBIT W. S. C. No. 7.

Filed October 27, 1894.

DEAR FANNIE: I returned home today from Balto. and found yours of the 31st ulto. with the papers to be executed by Gibson in due form.

I have seen Mr. Tayloe & collected from him the amount due on Minnie's share of the lots. I will explain about the agent. We very often employ a go-between to do the bargaining and chaffering in selling real estate, & can do better than by appearing directly in the business ourselves. In this case I think I got probably $500 more from Mr. Tayloe than I could have done in person. I promised the agent a fee, & though he wanted $100 I beat him down to $50. I reserved $25 out of your share & have since paid him the balance myself.

I did not intend to charge you anything for my services in the business, being glad to aid you in getting it settled, but as you seem anxious to have your little pile diminished, which so few persons are nowadays, I will reserve $50 for myself also. The amount rec'd is $778.50. Deducting the $75 from this, I send you a draft on N. York for bale., $703.50.

Do you expect to stay at Wilkes Barre any time? If so, you must make the acquaintance of some nice friends of mine who live there. They are Judge Conyngham's family. His oldest daughter, married some months ago — Mr. Parrish, is a very special friend of mine. He has another daughter, Miss Annie, a very nice person. His son, Lt. Col. Conyngham, was captured at Charleston some time ago & has recently been exchanged & is at home. Capt. Gibson
128 may meet with him, & should he do so I will be glad to be remembered to the family. If you expect to make a stay & will let me know how to direct her, I will write a note to Miss Annie requesting her to call on you.

Yours affectionately, WALTER S. COX.

Jan. 7, 1865.

Mrs. Fannie M. H. Gibson, care Capt. Gibson, Wilkes Barre, Pa.

P. S.—I am not sure that there is not a mistake in the amount. I have no memo. of the former payments & there is some confusion in Mr. Tayloe's entries. The only question is whether he deducted the interest on the taxes paid by him, in addition to the taxes, from his purchase-money. The interest was $36. One-third from each share would be $12, & if this was deducted it would reduce the amount to $766. You will remember what the other payments were.

W. S. C.

129 EXHIBIT W. S. C. No. 8.

Filed October 27, 1894.

DEAR FANNIE: Since writing to you yesterday I have received a letter from Mr. Tayloe saying he thinks there was a mistake in both his 2nd and his 3rd payments. I was under the impression that he had deducted all that was due him from the first payment (y'r share), and therefore I got a full third of the entire purchase-money, $833.33, from him for Gibson's share; but it seems, according to him, that this was not the case, but that after deducting his claim from the gross sum of $2,500 the balance gave to each heir $766.91. There was therefore an overpayment to Gibson of $66.42 & on this last payment of $11.59, making $78.01. It can be set right by your returning this sum when you get my draft *c*hashed. I write to you now that you may not invest the money till I write again, when I will give you the exact amounts.

Yours, &-., W. S. COX.

Jan. 10, 1865.

Mrs. Fannie M. H. Gibson, Wilkes Barre, Pa.

Endorsement: There was another letter from W—— in which he says *he says* he paid the 78.00. I have mislaid it, but it amounts to nothing.

130–174 EXHIBIT W. S. C. No. 9

Filed October 27, 1894.

DEAR FANNIE: Our collector of taxes met me in the street yesterday and informed me that there was a bill due for taxes on your lot lately sold and for expenses of tax sale. The purchasers, of course, expect that all taxes due before they purchased should be first paid. I didn't know of these taxes or had forgotten them. The amount is $38.46.

I am sorry to bother you with any afterclap when you thought everything was settled.

I called to see you at Mrs. Thomas' and found you had left.

Yours sincerely, WALTER S. COX.

Dec. 5, 1865.

Mrs. Fannie M. H. Gibson, care Maj. Geo. Gibson, Camp Winder, near Richmond.

* * * * * * *

175 *Final Decree Dismissing Bill, &c.*

Filed December 15, 1894.

In the Supreme Court of the District of Columbia.

FANNIE P. WILLIAMS *et al.*
vs.
JOHN W. PAINE *et al.* } No. 14529. In Eq.

This cause coming on regularly to be heard and having been argued by counsel for complainants and defendants and considered by the court, it is this 15th day of December, A. D. 1894, adjudged, ordered, and decreed that the bill be, and it is hereby, dismissed.

A. B. HAGNER.

From the foregoing decree the complainants, in open court, in presence of counsel for defendants, pray an appeal to the Court of Appeals, which is allowed.

A. B. HAGNER.

* * * * * * *

176 In the Supreme Court of the District of Columbia.

FANNIE P. WILLIAMS *et al.*
vs.
JOHN W. PAINE *et al.* } No. 14529. In Equity.

The President of the United States to John W. Paine, Estelle T. Paine, John Paine, Ogle Tayloe Paine, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal entered in open court in the supreme court of the District of Columbia on the 15th day of December, 1894, wherein Fannie P. Williams, Mary H. Bell, Robert Ransom, Jr., James J. B. Ransom, Matt W. McCorkle, Henry H. Ransom, George G. Ransom, and Seymour H. Ransom are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 15th day of December, in the year of our Lord one thousand eight hundred and ninety-four.

Seal Supreme Court of the District of Columbia.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 17 day of December, 1894.

WM. E. JOHNSON,
Attorney for Appellee.

177 *Opinion of Justice Hagner.*

Filed December 19, 1894.

In the Supreme Court of the District of Columbia.

FANNIE P. WILLIAMS *et al.* }
vs. } In Equity. No. 14529.
JOHN W. PAINE *et al.* }

Opinion by Mr. Justice Hagner.

In January, 1837, George W. Peter conveyed to Henry Huntt and Benjamin Ogle Tayloe, as tenants in common, a large number of lots and the square known as square 53, lying in Washington city. Soon afterwards Dr. Huntt died intestate, leaving two daughters, Fanny and Mary, and a son named George Gibson Huntt, to whom his undivided interest in these lands descended. The children were very young at the time and lived with relatives and friends in Washington city until they were grown. Fanny married an army officer named Gibson; Mary married Robert Ransom, Junior, also an officer, and George Gibson Huntt also became an officer of cavalry, to which service Ransom belonged. Ransom and wife and George Gibson Huntt were stationed at Carlisle barracks, in Pennsylvania, in May, 1859. Ransom seems to have anticipated that he might soon be ordered to the western country, where the cavalry was generally on service, and the record of the births of their children, in the family Bible in evidence, shows that he and his wife soon moved there. The Washington city property had re-
178 mained undivided and apparently unused, Mr. Tayloe at one time buying it at tax sale for unpaid taxes and receiving a tax deed in 1864. Ransom was a native of North Carolina, and when that State seceded in the spring of 1861 he resigned his commission in the army and entered the Confederate service, where he rose to the rank of general. George Gibson Huntt remained in the old army. After the pacification General Ransom returned to North Carolina to live, where his wife died in 1881, leaving a number of children. He remained there until 1892, in which year he died.

The bill in this case is filed by the children of Robert Ransom, Jr., and his wife, Mary, against John W. Paine, the surviving husband of Julia D., one of the daughters of Benjamin Ogle Tayloe, and their infant children. It sets forth with some fullness the foregoing facts and alleges that John W. Paine, holding as tenant by the courtesy, has erected a large number of buildings all over the square and has received for himself all the rents and income therefrom. Its prayers are that a deed executed by George Gibson Huntt to the said Tayloe may be declared null and void as a cloud upon the title of complainants in the square of ground in Washington city described upon the plat of the city as square No. 53; that the right of the complainants to one-sixth interest therein in fee as

tenants in common may be established against the defendants; that the complainants may have their one-sixth part of said square set off to them if that may be found practicable, and, if not, that a sale of the property may be made for that purpose and their interest allotted to them out of the proceeds; that John W. Paine may be required to account to them for the rents and profits he has
179 received from the said square, and for further relief.

The defendants claim title to the undivided interest of Mary Ransom to square 53 under the will of Benjamin Ogle Tayloe, through an alleged sale and conveyance made by General Ransom and his wife to their ancestor. The instruments claimed to convey that interest consist of a power of attorney from Mrs. Ransom and her husband to George Gibson Huntt, the brother of Mrs. Ransom, which recited her claim to an interest in said square, among other real estate therein described, and that, to provide for the contingency of their absence, Ransom and wife (to pursue the words of the power of attorney) thereby "constitute and appoint in our place, put and depute the said George Gibson Huntt to be our true and lawful attorney-in-fact for us and in our name, place, and stead, to control, manage, grant, bargain, and sell, and in that event to convey all our right, title, and interest in and to the said lots and square of ground or any part thereof or to join in and for us and in our name to sign any proceedings in partition of the said lots and square or to appear for us in court for that purpose; and in regard to the said real estate to do, execute, and perform every act and thing necessary to be done, as fully and amply as we might or could do if personally present, and we do hereby ratify and confirm all and whatever our said attorney-in-fact may legally do in the premises."

This instrument was acknowledged on the 24th of May, 1859, before the presiding judge of the ninth judicial district of Penn-
180 sylvania, and the certificate of the judge contains a statement of the privy examination of the wife, in proper form, and the proper authentication under the act of Congress is appended. It was recorded among the land records of the District of Columbia on the 14th of January, 1865.

On the same day there was recorded a deed from George Gibson Huntt, dated November 29th, 1864, to Benjamin Ogle Tayloe, by which the said Huntt declared that "by virtue of the annexed power of attorney to me from Robert Ransom, Jr., and Mary, his wife," in consideration of $833.32 to him in hand paid, he has bargained and sold to said Tayloe, his heirs and assigns, all the right, title, and estate of the said Ransom and wife in and to all the lots and the square described in the power of attorney, with the appurtenances and improvements, concluding with the words "and I hereby further agree in behalf of said Robert Ransom, Jr., and Mary Ransom, his wife, that they shall and will, as soon as convenient, make and execute a proper deed of conveyance of said premises to said Benjamin Ogle Tayloe in fee-simple." This deed is signed "George Gibson Huntt," under seal, in presence of one witness.

It was acknowledged on the 4th of January, 1865, before two per-

sons, each of whom signs himself "alderman, *ex officio* justice of the peace." The clerk of the common pleas court of Dauphin county, Pennsylvania, appends his certificate, under seal of office, that the said persons were, in fact, at the time justices as they purport to be.

The complainants charge that these two instruments of writing are invalid and void so far as they purport to affect any title or interest of Mary Ransom in the said square of ground.

Of their informality on their face upon several grounds
181 there can be no doubt. But the defendants insist that whatever defects existed in these instruments themselves or in the aknowledgments attached to them have been cured by the operation of the act of Congress passed March 3rd, 1865 (13th Stats., p. 831), entitled "An act to quiet titles in favor of parties in actual possession of lands situated in the District of Columbia," which forms sections 459 *et seq.* of chapter 14, Revised Statutes of the District of Columbia, though differing in arrangement and in collocation of language and in some other respects. The first part of section 1 of the act enumerates in detailed order a variety of errors that are assumed to have appeared in the forms of deeds already recorded or in their acknowledgment; then follows a declaration that all such faulty deeds and acknowledgments shall be of the same effect and validity to pass the estate intended to be conveyed and to bar dower in the real estate therein mentioned in favor of parties in actual possession as if such deeds or acknowledgments had been made in the manner thereinafter set forth in successive paragraphs corresponding in arrangement with the order of statement of the particular faults first enumerated.

The section concludes with these two provisos, upon the existence of which the validation and cure of such instruments is made to depend: First, that the certificate of the acknowledgment by a *feme covert* to any such deed must show that her acknowledgment was made apart or privily from her husband or otherwise shall show that she declared it was made out of his presence, and that
182 she declared she willingly executed the deed or that it was her voluntary act or to that effect; and, second, that when a power of attorney shall have been executed by a *feme covert* the same shall be effectual and sufficient, provided there shall appear to have been such an acknowledment of such power of attorney by the wife as would be sufficient under the provisions of this act to pass her estate and interest therein were she a party executing the deed of conveyance.

The statute, in its enumeration of errors in conveyances theretofore recorded, comprehends and sets forth with most remarkable accuracy all the errors that appear in the power of attorney and deed before us. (1) George Gibson Huntt, the attorney-in-fact under the power, did not execute a conveyance under the power in the name of his principal, but in his own name; (2) the deed was acknowledged by Huntt "before officers different from those before whom proof of the power of attorney was made;" (3) the deed was acknowledged outside of the District before two aldermen of a

city; (4) there was not a complete certificate appended to the deed under the act of Congress as to the official character of the officer taking the acknowledgment. Indeed, the marked identity of description would almost suggest that the draughtsman of the statute had these instruments before him when he was framing the law.

These are four of the errors and defects the statute especially professed to cure, and after distinctly describing the — it then effectively declares that neither one nor all of these particular defects, errors, or omissions (thus plainly appearing in the power of attorney to Huntt and in his deed to Tayloe) shall invalidate the force
183 of those instruments, but that they shall be of the same validity as if the faulty paragraphs had been legally framed and expressed to pass the estate intended to be conveyed subject to the two provisos, the first of which (requiring the acknowledgment of the *feme covert* to show that it was privily made) appears to have been fully complied with, from the certificate to the power of attorney made by Judge Graham, and the second (that the acknowledgment of a power of attorney by a *feme covert* must have been in such form as would be sufficient to pass her estate and interest by a deed under the provisions of the act) is clearly shown to have been fulfilled in the acknowledgment by Mrs. Ransom of the power of attorney before Judge Graham.

The act, being highly remedial in its nature, must be beneficially construed; but it needs but a moderately liberate construction to include the present case within its benevolent purposes.

The statute plainly declares that a power of attorney executed by a *feme covert* shall be effectual and valid (if it has been acknowledged by her in the manner described therein) as sufficient to pass her estate and interest if she were party executing the deed of conveyance. Such an acknowledgment undoubtedly was made by Mrs. Ransom to the power of attorney.

It then results that Huntt was clothed by Mrs. Ransom and her husband with full power to convey her interest in the land by virtue of the power of attorney, and the other provisions of the act fully remedy the defects of his deed and its acknowledgment. As, then, upon the face of the act every informality in either of the two instruments is first carefully described and then each of said
184 informalities is declared seriatim to be thereafter cured (provided the two essential requirements designated in the provisos appear in the informal instruments), and as those instruments as then executed and acknowledged did manifestly contain these two essential requirements, their validation is complete, provided the act of 1865 is a constitutional exercise by Congress of its powers of legislation.

It is too late now to contest the general power of the legislature to pass statutes of this character. The instances in which it has been done in Maryland are very numerous. Many of such acts, of varied character, are referred to in 10 Maryland, 478, Calvert *v.* Williams, and many instances appear in the legislation of the other States, though not, perhaps, to the same extent. Congress has repeatedly legislated in the same direction. In the statute before us,

by sec. 3, another class of defects and omissions in disregard of directions of other statutes as to conveyance is healed; and sec. 458 of our Revised Statutes contains other provisions curative of such omissions enacted by the law of the 3rd of March, 1863, in the same direction.

It is insisted, however, by the complainants that the uttermost limits to which the act of 1865 could properly be extended would be to cure irregularities in deeds which would be valid except for these irregularities, and that it cannot be justly construed so as to make good the deed from Huntt to Tayloe and thus deprive Mrs. Ransom of her estate in the property, since such a result could only be accomplished by a direct conveyance signed by her and
185 acknowledged according to the law touching deeds by married women, notwithstanding the positive terms of the act of 1865.

There have been cases where the legislature under the guise of curing acts have attempted to interfere with the vested rights of the citizen, and wherever this mischief appears to have been attempted the courts will refuse to enforce such laws; but such an interference could only result from disregarding the true principles upon which legislation of this character is justified. Judge Cooley, in his discussion of the subject, assumes as a preliminary proposition that a party has no vested right in a defence based upon an informality not affecting his substantial equities. Cooley on Constitution- Limitation (370). He adds: "If the thing wanting or that failed to be done and which constitutes the defect in the proceedings is something the necessity for which the legislature might have dispensed with by prior statute, then it is not beyond the power of the legislature to dispense with it by subsequent statute, and if the irregularity consists in doing some act or in the mode or manner of doing some act which the legislature might have made immaterial by prior law it is equally competent to make the same immaterial by a subsequent law." (371.)

The author cites the decisions in Ohio, where statutes have been held valid that declared deeds previously executed by husband and wife should be received in evidence, although the magistrate shall not have certified that he had read the deed to the wife, notwithstanding the statutes then in force had declared that deeds
186 should be ineffectual for record and evidence where the officer omitted that statement from his certificate, the deeds being regarded by the courts as sufficient for conveying at least the grantor's equitable estate, and if sufficient for this purpose no vested right would be disturbed or wrong done by making them receivable in evidence as conveyances.

"Other cases," says the author, "go much farther than these and hold that, although the deed was originally ineffectual for the purpose of conveying the title, the healing statute may accomplish the intent of the parties by giving it effect." In 11 Ohio N. S., 641, Gosham *v.* Purcell, the court said: "The act of the married woman may under the law have been void and inoperative; but in justice and equity it did not leave her right to the property untouched.

She had capacity to do the act in a form prescribed by law for her protection. She intended to do the act in the prescribed form. She attempted to do it and her attempt was received and acted on in good faith. A mistake subsequently discovered invalidates the act. Justice and equity require she shall not take advantage of the mistake, and she has therefore no just right to the property. She has no right to complain if the law which prescribed forms for her protection shall interfere to prevent her reliance upon them to resist the demands of justice."

In 25 N. J., 187, State *vs.* Newark, the court said: "Laws curing defects which would otherwise operate to frustrate what must be presumed to be the desire of the party affected cannot be considered as taking away vested rights. Courts do not regard rights as vested contrary to the justice and equity of the case."

187 The decisions in the Supreme Court of the United States and in the other United States courts on this subject are in accordance with these principles.

In 23 Wallace, 138, Randall *vs.* Kreiger, it appeared that Randall and his wife, living in New York, had executed, in 1849, a power of attorney authorizing an agent to sell lands in Minnesota. Several years afterwards, in 1858, the attorney, professing to act in behalf of Randall and wife, sold the land and conveyed with general warranty and paid the purchase-money to the principals. Up to this time there was no law in Minnesota authorizing a *feme covert* to execute a power under seal to convey her real estate.

Two years afterwards, in 1857, the legislature passed a law authorizing a husband and wife to convey, by their attorney, lands within the State, and declaring that "all deeds of conveyance of any such lands, whether heretofore or hereafter made, shall be as binding and have the same effect as if made and executed by the original parties."

After the passage of the law Randall and wife, by an instrument duly executed, revoked the power of attorney made in 1849; soon afterwards Randall died, leaving all his estate to his wife. She then brought an action in the United States circuit court to recover her dower in the land, relying upon the informality of the power of attorney from herself and husband of the attorney's deed and upon the unconstitutionality of the curing law. The court (Dillon, J.) sustained the validity of the statute, and on appeal this ruling was affirmed by the Supreme Court. The case seems so fully

188 to cover that before us that it is needless to recapitulate the points of the opinion, and I quote a passage from the opinion of the court by Mr. Justice Swayne, chiefly by way of availing myself of the court's statement of the earlier case of Watson *v.* Mercer, 8 Pet., 100, on the same subject.

Says Justice Swayne: "The power of a legislature under the circumstances of this case to pass laws giving validity to past deeds which were before ineffectual is well settled."

"In Watson *vs.* Mercer the title to the premises in controversy was originally in Margaret Mercer, the wife of James Mercer. For the purpose of transferring the title to her husband they conveyed

to a third person, who immediately conveyed to Mercer. The deed of Mercer and wife bore date of the 30th of May, 1785. It was fatally defective as to the wife in not having been acknowledged by her in conformity with the provisions of the statutes of Pennsylvania of 1770 touching the conveyance of estates by *femes covert*. James Mercer died leaving children by a former marriage. After the death of both parties her heirs sued his heirs in ejectment for the premises and recovered. The supreme court of the State affirmed the judgment. In 1826 the legislature passed an act which cured the defective acknowledgment of Margaret Mercer and gave the same validity to the deed as if it had been well executed originally on her part. The heirs of James Mercer thereupon sued her heirs and recovered back the same premises. This judgment was also affirmed by the supreme court of the State, and the judgment of affirmance was affirmed by this court. This case is conclusive of the case before us."

189 The reports of these cases show the same class of arguments were urged before the supreme court that have been presented here, attacking the scope and authority of the curing acts, but they were overruled.

The learned justice added: "This curative act of 1857 has a strong natural equity at its root. It did for her (the wife) what she had attempted to do, intended to do, and doubtless believed she had done, and for doing which her husband was fully paid." "The act accomplished what a court of equity, if called upon, would have decreed promptly as to the husband and would have failed to do so as to the wife only from a want of power. The unbending rule of law as to *femes covert* in such cases would have prevented it. The legislature thus did what right and justice demanded, and the act strongly commends itself to the conscience and approbation of the judicial mind."

The same observations apply to the case before us. Ransom and wife fully intended to confer an ample power to sell the property upon her brother, and probably none of the parties for ten years doubted its sufficiency. Huntt sold Mrs. Ransom's interest for the same amount he and his other sister each obtained for their equal shares. There is proof the consideration was a fair one; that the sale was made with the purpose of aiding General and Mrs. Ransom; that Mrs. Ransom was in Washington on a visit to her sister after the war; that she received all the purchase-money, and no word of complaint by her or her husband as to the propriety or validity of the sale is disclosed in the record, although she lived seventeen years and he twenty-eight years after it had been effected. As was said in Randall *vs.* Kreiger, consent to remedy the irregularity upon their part must be presumed.

190 We are at liberty, it may be added, to examine the original statute of 1865 to ascertain the particulars in which the revision may have interferred with its language in the distribution of the act into different sections; and it is clear that no subsequent revision of the statute could affect the validity of the deed after it was established in 1865 by the terms of the curing act.

Osborne *v.* Nicholson, 13 Wall., 662.

But it is contended on behalf of the complainants that however the law might be as to the curative act between suitors generally, yet the intervention of the civil war wrought such a change in the relations of these parties that this case must be excepted out of the ordinary effect of the statute.

It may be said, *in limine*, that the statute is most general in its terms, and which are broad enough to comprehend, without exception, all deeds. It was passed, *flagrante bello*, and Congress must have known that such errors and omissions would probably have occurred frequently in deeds executed during that period between parties residing in different portions of the count-y which were then in hostility. The intervening distance and the disadvantages under which such transactions would necessarily have been conducted would inevitably have caused a larger ratio of errors and irregularities in such instruments than in deeds between parties living near together and under the same military surroundings; and yet nothing is suggested in the law excepting such deeds from its effect, as would naturally have been the case if Congress had not intended the law should cover all cases where such defects appeared
191 in conveyances, as it professed to do.

The court has been referred to authorities assenting the general principle that all commercial intercourse between the citizens of the belligerent countries is revoked by a war between them, and to several decisions in some of the Southern States declaring that powers of attorney executed before the late civil war by a citizen on one side of the lines to one on the other side were revoked by the hostilities.

The general principle is founded upon the idea that if such intercourse is allowed a person on one side may render pecuniary assistance to citizens of the enemy's country; but the authorities also state that when this consequence cannot result the rule does not apply. Thus in one of complainants' cases, 11th Heiskell, 739, it is held the power of an agent to collect funds of his principal continues, notwithstanding the war, but that he has no right to transmit them across the lines, nor does the general principle apply, "as was said by Justice Washington in Conn. *v.* Penn., 3 Wash. C. C., 396, where the creditor, though a subject of the enemy, remains in the country of the debtor or has a known agent there authorized to receive the debt, because the payment to such creditor or his agent could in no respect be construed into a violation of the duties imposed by a state of war upon the debtor. The payment in such cases is not made to an enemy, and it is no objection that the agent may possibly remit the money to his principal." "Nor can the rule apply when one of several joint debtors resides within the same country with the creditor or with the known agent of the creditor." 4 H. and McH., 161; Paul *vs.* Christie, 16 Johns. (484); Griswold *v.* Waddington.

192 In the Georgia and North Carolina cases and in 4th Court of Claims, 517, the decisions turned upon the assumption of power by the agent beyond his authority, although the general

principle is stated in each (except in 4th Court of Claims) as contended for by complainants' counsel.

In 19 Johnson (137), Buchanan *v.* Curry, payment was made by a citizen of New York during the war of 1812 to an agent of a Canadian, residing also in New York, on a contract made before the war. The court say, p. 141: "The war suspended the remedy by suit on the contract, but it is not unlawful voluntarily to pay debts or perform contracts to alien enemies if the payment be made or the duty be performed in our country." In illustration the court supposes the case of a contract was made before hostilities by an American with an Englishman to deliver flour in New York, which the court held it would be lawful to fulfill by delivering the flour to the Englishman, though an alien, during the continuance of the war, provided it was delivered in New York.

In 20 Grattan, 630, Manhattan Co. *vs.* Warwick, the insurance company had issued a life policy in Virginia before the war. During the war the company had an agent residing in Richmond, but he had refused to receive the premiums which were tendered to him. The insured died during hostilities, and in the suit on the policy it was held the offer was the equivalent of payment and the war was not a sufficient excuse for the agent's refusal. The court of appeals declare "if the contract can be carried into execution, notwithstanding the war, without conflicting with the obligation of allegiance to either party, it will neither be dissolved or suspended."

193 Assuming, as we must in the present inquiry, that the power of attorney and deed are valid but for this objection, it seems to me this transaction falls within the above exceptions to the rule relied on, if, indeed, the rule could apply to a case like the present in any event.

The power of attorney made before the war authorized Huntt to sell the lands in the non-seceding States, where he himself lived and continued to live. Its sale could in no way aid the Confederate States, for the agent could only have received the money and could not have remitted it. Says Justice Field in Ward *v.* Smith, 7 Wallace, 447: "It does not follow that the agent, if he receives the money, will violate the law by remitting it to his principal." "If he should do so the offence is imputable to him," says Justice Washington in Conn *v.* Penn, "and not to the person paying him the money."

But I cannot think this general principle, relating to commercial intercourse between belligerents, has application to a transaction like this, between citizens of the United States who happened to be on different sides during our civil war. Although some of the principles applicable to a war between foreign nations were invoked during that conflict, the present rights of citizens to their private property are not to be passed upon as if the United States had been engaged in a war with England or some other foreign country. Every citizen of Great Britain is an alien as to this country, for he is the citizen of an established government and owes allegiance to no other; but General Ransom was a citizen of the United

States when he executed the power of attorney, and he never was an alien in the sense in which an Englishman is an alien.
194 If the secession had been successful and an independent government had been established, such would have been his status towards this country; but that state of case never came to pass, and therefore no such change in his status took place. If an Englishman during a war with our country were to come to New York he would still be an alien, subject to all the incapacities of alienage, and would remain such unless he were made a citizen here by naturalization. Multitudes of persons whose homes were in the seceded States were within the loyal States during the war, but they were under no incapacity as to buying or selling or conveying property here. After the pacification General Ransom was still a citizen of the United States, not because of any naturalization, but because his original status remained undisturbed, as he had never become a citizen of another established government. Certainly Mrs. Ransom, who was the owner of the property and was born a citizen of the United States, never lost that citizenship. If her husband had become a citizen of an established government, she might then, by some act of adoption on her part or possibly by reason of her wifehood, have changed her citizenship into a condition of alienage as to the United States; but as that event never happened, I hold she never was an alien, and never could on that assumption have been subjected to all the severe rules that govern such a condition. Nothing would have been more unjust than for the courts to have adopted and enforced the contrary view. Numbers of persons who served in the Confederate armies have been and are now holding high official positions under the United States Government who never dreamed they were aliens when the
195 war closed, and to become citizens of the United States it was necessary for them to go through the formality of naturalization incumbent upon the foreign-born. The Supreme Court in 1st Peters, 343, has shown that the word alien signifies a foreigner; but each of these men could say with Paul, "But I was free-born."

The instances during the war of the adoption by law or regulations on both sides of some of the penalties and rules that obtain in wars between alien belligerents did not operate to make the contestants aliens. A war even between brothers must have many of the sad accompaniments of misery and death that attend conflicts in arms between foreign States, but the contestants are not for that reason made aliens and foreigners to each other. The disabilities declared by President Johnson to apply to certain enumerated classes, such as high officers in the Confederate army, did not convert those persons into aliens. But these were all abrogated by a general amnesty for all transactions that had taken place during the war, and any liability for such transactions was thereby as fully obliterated as if they had never occurred.

Justice Field, in Ward *v.* Smith, 7 Wallace, 483, says: "It is not necessary to consider here whether the rule that interest is not recoverable on debts between alien enemies during war of their respective countries is applicable to debts between citizens of States

in rebellion and citizens of States adhering to the National Government in the late civil war," thus showing the court recognized the difference between the status of citizens of the United States on
196 different sides in a civil strife and citizens of separate governments always alien to each other. Could England have considered the revolting Canadians as aliens after the close of that war? It matters not as to this inquiry whether the war continued one month or five years, the event determines the status of the country and of the people. The Brazilians recently in revolt against the new republic there were not aliens during its continuance, nor did they become such after its suppression; and so of the numerous insurrections in France.

A ground of objection relied on by the defendants is that this is a bill for partition brought by alleged tenants in common, not in possession, against their co-tenants, who are admitted to be in possession, seeking for a decree which shall apportion to them their sixth part of the land and premises, and that this is precisely the relief that could be sought and secured by an action of ejectment at law, and is therefore not attainable in equity.

In Killian *v.* Ebbinghaus, 110 U. S., 573, the Supreme Court dismissed a bill brought by parties out of possession calling for a recovery of possession of land upon the ground that such relief could only be obtained by action at law. The court there quote from the opinion in Hipp *vs.* Babin, 19 How., 271, in which it was said: "The bill in this case is in substance and legal effect an ejectment bill; the title appears by the bill to be merely legal." "Whenever a court of law is competent to take cognizance of a right and has power to proceed to a judgment which affords a plain, ade-
197 quate, and complete remedy without the aid of a court of equity, the plaintiff must proceed at law, because the defendant has a constitutional right to a trial by a jury." And the court adds that it will, *sua sponte*, enforce this principle, though the point may not be raised by the pleadings or suggested by counsel.

That this bill is of the character described does not admit of question. It ex[illegible]licitly claims an ownership in common by the complainants (showing they are out of possession) with the defendants, and avers that the defendants have built on the land and are receiving all the rents from the houses and exclude the complainants, and the prayer is for a partition, and the bill is endorsed by counsel as a "bill for partition."

Upon such a case and such allegations this court, in 6 Mackey, p. 157, Moore *v.* Shannon, dismissed a bill brought by children against their mother for partition of land held by the mother for life which had been assigned to her as her dower, adopting the principle stated by Freeman on cotenancy and partition, section 446, to prevail universally in England and also throughout the majority of the United States, that no person has the right to demand any court to enforce a compulsory partition unless he has an estate in possession, one by virtue of which he is entitled to enjoy the present rents or the possession of the property as one of the co-tenants thereof, and declaring that, whether the title of a co-tenant or co-

parcener be legal or equitable, it is still, notwithstanding the act of 1876, indispensable to his right to institute such proceedings that he should be actually seized or in possession of whatever estate he may claim to be entitled to. The same statement of the law is to
198 be found in 2nd White and Tudor's Leading Cases in Equity, Agar *v.* Fairfax, pp. 900–903, and in 8 L. R. Equity Cas. (470), Evans *v.* Bigelow.

The plaintiffs previously seemed to recognize the necessity of bringing suit at law for the relief they now seek, and accordingly instituted the three ejectment suits given in evidence, in which they expressly aver the possession of the defendant John W. Paine and their own ejectment by him.

It is true Mr. Pomeroy, vol. 3, sec. 1387, says, as is stated by complainants' counsel, that the remedy in equity in partition is not confined to tenants in possession, but extends to all persons interested, whether presently or in expectancy, etc.; but it is also true that in note No. 1 to the section he says: "While all persons interested in the land, whether in possession or expectancy, are proper parties to a bill for partition, only those in possession are entitled to file the bill."

There is another difficulty in sustaining the complainants' right to relief in equity. Pomeroy, in section 1388, says: "The complainant must show title in himself and such title as will establish his rights as against the defendant to a partition. When the complainant's legal title is disputed, courts of equity decline the jurisdiction to try this question; but in analogy in dower they will retain the bill for a reasonable time until the issue of title has been determined by law."

In Mudd *v.* Grinder, equity, No. 13113, this court acted on this principle, and its action was affirmed by the higher court.

That there is a very serious dispute about the title to these lands between the complainants and the defendants cannot very
199 well be denied by the complainants.

Hence it would be impossible to proceed now with this case, even if it were not so evident the complainants are not in possession; but there would be no excuse for retaining the present suit for the determination of an action at law to try the title, because no case is made to justify such action by the court.

For these reasons I will sign a decree dismissing the bill.

A. B. HAGNER.

December 15th, 1894.

200 Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 199, inclusive, are true copies of the originals in cause No. 14529, in equity, wherein Fannie P. Williams, Mary H. Bell, Robert Ransom, Jr., James J. B. Ransom, Matt W. McCorkle Ransom, Henry H. Ransom, George G. Ransom, and Seymour H. Ransom are complainants and John W. Paine, Estelle T. Paine, John Paine,

and Ogle Tayloe Paine are defendants, as the same appear upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 14th day of January, A. D. 1895.

JOHN R. YOUNG, *Clerk.*

201 In the Court of Appeals of the District of Columbia.

FANNIE P. WILLIAMS *et al.*
vs.
JOHN W. PAINE *et al.*
} No. 421.

The appellant- hereby assigns as errors in the court below the following:

1. The court erred in finding that the alleged power of attorney, dated the 23rd day of May, 1859, from Robert Ransom, Jr., *et ux.* to George Gibson Huntt was a valid and sufficient instrument to pass the fee of Mary Ransom to the real estate therein described.

2. In finding that the paper dated the 29th day of November, 1864, and found on page 58 of the transcript of the record was a valid and sufficient instrument to pass the fee title of Mary Ransom to the real estate described therein.

3. In holding that said alleged power of attorney had not been revoked.

4. In holding that the act of Congress March 3d, 1865, cured any of the alleged defects in the instruments mentioned in the 1st and 2nd of these assignments of error.

5. In holding that said Mary Ransom, a married woman, was by said act empowered to convey her real estate by power of attorney, and that said act was retroactive.

6. In not holding that as neither the defendants nor those under whom they claim were in actual possession of said real estate on the 3rd day of March, 1865, the said act of Congress of that date had no application to the instruments mentioned in the 1st and 2nd assignments of error.

7. In finding that the purchase-money from the alleged sale of the land in controversy was received by said Mary Ransom.

8. In dismissing the bill of complaint.

202 9. In not granting the relief prayed for in said bill.

FRANKLIN H. MACKEY,
H. O. CLAUGHTON,
Sol's for Pl'ff-.

Wm. G. Johnson, Esq., sol. for defendants.

SIR: Take notice that the foregoing assignments of error will be relied on to sustain the appeal prosecuted in this cause, and that we hereby designate all of the transcript of the record to be printed as necessary to the hearing of the cause except the following designated portions thereof:

1st. Omit the joint answers of the defendants Estelle T. Paine *et al.*, found on pp. 20 *et seq.* of the transcript, except the last 12 lines of said joint answer, on page 29, and print on page 19, immediately following the answer of the defendant John W. Paine, the following, to wit: "The answers of the other defendants are the same in substance as the foregoing answer of the defendant John W. Paine except the last twelve lines, which are as follows." (Here insert said last 12 lines.)

2. Omit pages 32, 33, 34, 35, 41, 42, and 51 of the transcript.

3. Omit that part of page 54 beginning with the words "I certify" down to the end.

5. Omit that part of page 59 beginning at the word "endorsement" down to the end.

6. Omit pages 60, 61, 62, and 63, and say in lieu thereof, "Exhibit J. A. L. No. 3 is a deed from George W. Peter, dated the 23d of January, 1837, and conveying to Henry Huntt and Benjamin Ogle Tayloe in fee as tenants in common the land described in Exhibit J. A. L. No. 1, said deed being recorded in the land records of the District of Columbia Jan'y 27, 1837, in Liber W. B. 63, folio 212 *et seq.*"

7. Omit page 65 and so much of page 66 as begins with the words "In the Supreme Court" and ends with "testified as follows."

203 8. Omit all of page 82 after the words "and I further certify," &c.

9. Omit all of pages 83 and 84 and the first 9 lines of page 85.

10. Omit all of pages 100, 101, and 102.

11. Omit pages 117 to 121, inclusive, and the first six lines of page 122, and say in lieu thereof, "Exhibits W. S. C. No. 1 and W. S. C. No. 2 are the same as Exhibits J. A. L. No. 1 and J. A. L. No. 2."

12. Omit pages 122, 123, & 124, and say in lieu thereof, "Exhibit W. S. C. No. 3 is a deed, dated October 28, 1864, from George Gibson Huntt to Benjamin Ogle Tayloe, conveying in fee all his (Gibson's) interest in the land described in Exhibit J. A. L. No. 1 and recorded in the land records of the District of Columbia November 26, 1864, in Liber N. C. T. No. 50, folio 92 *et seq.*

13. Omit all of Defendants' Exhibits Nos. 10 & 11, on pp. 131 to 167, and the first six lines of page 168, and say in lieu thereof:

"Defendants' Exhibit No. 10 is a duly certified copy of a deed from the corporation of Washington to Benjamin Ogle Tayloe, dated the 20 day of June, 1864, and recorded in said land records June 21, 1864, and purporting to convey in fee to said grantee the land described in Exhibit J. A. L. No. 1, the said deed being what is known as a 'tax deed,' made in pursuance of an alleged sale by said corporation of said land for non-payment of taxes."

"Defendants' Exhibit No. 11 is a duly certified copy of the will and codicils thereto of Benjamin Ogle Tayloe, the will being dated July 1, 1856, and duly probated in the orphans' court of said District July 11, 1868. Said will devises in fee to the testator's daughters, Estelle Francis Tayloe, Eugenia Pheobe Warren, and Julia Dickenson Tayloe (who was afterwards the wife of the defendant John W.

69 Paine and known in these proceedings as Julia Paine), all the real estate claimed to be owned by the testator in Washington, D. C., excepting only certain pieces not material to be referred to in this cause, and is republished by codicil dated November 20, 1867."

14. Omit all of Defendants' Exhibit No. 12 as contained on pages 168 to 173 of the transcript, and say:

"Defendants' Exhibit No. 12 is a partition deed, dated November 7, 1870, from Pheobe W. Tayloe, widow of Benjamin Ogle Tayloe; Eugenia Pheobe Warren *et vir*, and Edward Thornton Tayloe, children and devisees of said Benjamin Ogle Tayloe, to Julia Dickenson Paine, daughter of said Tayloe and wife of the defendant John W. Paine. Said deed conveys in fee to said grantee all the interest of the grantors in and to the said square 53 and is recorded in the land records of the District of Columbia December 13, 1870, in Liber 633, folio 278."

15. Omit all of pages 173 & 174.

16. Omit all of page 175 after the 16th line.

FRANKLIN H. MACKEY,
H. O. CLAUGHTON,
Sol. for Pl'tffs.

Service acknowledged this 22d day of January, A. D. 1895.

WM. G. JOHNSON,
Solicitor for Defendants.

(Endorsed:) Court of Appeals, D. C., January term, 1895. No. 421. Fannie P. Williams *et al.*, appellants, *vs.* John W. Paine *et al.* Appellants' assignment of errors and designation of parts of record to be printed. Court of Appeals, District of Columbia. Filed Jan. 22, 1895. Robert Willett, clerk.

Endorsed on cover: District of Columbia supreme court. No. 421. Fannie P. Williams *et al.*, appellants, *vs.* John W. Paine *et al.* Court of Appeals, District of Columbia. Filed Jan. 22, 1895. Robert Willett, clerk.

ADDITION TO RECORD PER STIPULATION OF COUNSEL. FILED M'CH 28, 1895.

Order for Appearance of Absent Defendants.

Filed March 20, 1893. J. R. Young, clerk.

In the Supreme Court of the District of Columbia, the 20 Day of March, 1893.

FANNIE P. WILLIAMS *et al.* *vs.* JOHN W. PAINE, ESTELLE T. PAINE, JOHN PAINE, OGLE TAYLOE PAINE.	In Equity. No. 14529, Docket 35.

On motion of the plaintiffs, by Mr. Franklin H. Mackay, their solicitor, it is ordered that the defendants, John W. Paine, Estelle

70 T. Paine, John Paine, and Ogle Tayloe Paine, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to remove a cloud from the title of complainants to their one-sixth interest in square fifty-three (53), in the city of Washington, and for a partition or sale of said square between the plaintiffs and defendants and for an account of rents and profits.

By the court:

E. F. BINGHAM,
Chief Justice, &c.

Motion to Quash Order of Publication.

Filed April 4, 1893. J. R. Young, clerk.

In the Supreme Court of the District of Columbia.

FANNIE P. WILLIAMS *et al.*
vs.
JOHN W. PAINE *et al.*
} No. 14529. In Eq.

Now comes John W. Paine, by Wm. G. Johnson, his solicitor, &, not admitting any jurisdiction in this court, but expressly denying the same, & appearing specially for the purposes of this motion & for no other purpose whatsoever, moves the court to quash and set aside the order of publication herein, passed on the twentieth day of March, A. D. 1893, against him and the other defendants herein named, because he says that this court is and was at the time of making the said order of publication herein without any power or jurisdiction to make said order & is without any jurisdiction to proceed in said cause, as fully appears by the record in this case.

JOHN W. PAINE,
By WM. G. JOHNSON,
His Solicitor.

Order Denying Motion to Quash Order of Publication.

In the Supreme Court of the District of Columbia.

FANNIE P. WILLIAMS *et al.*
vs.
JOHN W. PAINE *et al.*
} No. 14529. In Eq.

This cause coming on to be heard upon the motion filed herein on the fourth day of April, A. D. 1893, to quash the order of publication herein passed on the twentieth day of March, A. D. 1893, and having been argued by counsel and considered by the court, the same is, this 17th day of April, A. D. 1893, denied.

E. F. BINGHAM, *C. J.*

71 *Motion to Quash Order of Publication.*

Filed April 20, 1893. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

FANNIE P. WILLIAMS *et al.*
vs.
JOHN W. PAINE *et al.* } No. 14529. In Eq.

Now come the defendants, Estelle T. Paine, John Paine, and Ogle Tayloe Paine, by Wm. G. Johnson, their solicitor, &, not admitting any jurisdiction in this court, but expressly denying the same, & appearing specially for the purposes of this motion & for no other purpose whatsoever, move the court to quash and set aside the order of publication herein, passed on the twentieth day of March, A. D. 1893, against them & the defendant John W. Paine, because they say that this court is and was at the time of making the said order of publication herein without any power or jurisdiction to make said order & is without any jurisdiction to proceed in said cause, as fully appears by the record in this case.

ESTELLE PAINE,
JOHN PAINE,
OGLE TAYLOE PAINE,
By WM. G. JOHNSON,
Their Solicitor.

Order Denying Motion.

In the Supreme Court of the District of Columbia.

FANNIE P. WILLIAMS *et al.*
vs.
JOHN W. PAINE *et al.* } No. 14529. In Equity.

Upon consideration of the motion this day filed on behalf of the defendants, Estelle, John, & Ogle Tayloe Paine, to quash the order of publication herein, it is by the court, this 20th day of April, ordered that the same be, and it is hereby, denied.

E. F. BINGHAM, *C. J.*

MARCH 28, 1895.

It is hereby stipulated by counsel for appellant- and appellee- that the foregoing four pages, omitted from the transcript by the clerk of the court below, under paragraph "*b*," section 1, of rule V of this court, be included in the transcript of the record and printed as part thereof.

FRANKLIN H. MACKEY,
Counsel for Appellant-.
WM. G. JOHNSON,
Counsel for Appellee-.

(Endorsed:) Fannie P. Williams *et al.*, appellants, *vs.* John W. Paine *et al.* Addition to record per stipulation of counsel. Court of Appeals, District of Columbia. Filed Mar. 28, 1895. Robert Willett, clerk.

72 In the Court of Appeals of the District of Columbia.

MARCH 29TH, 1895.

FANNIE P. WILLIAMS *et al.*
vs.
JOHN W. PAINE *et al.* } No. 421.

It is mutually stipulated by and between the parties to this cause, by their respective solicitors, that the signature of J. H. Graham affixed to the acknowledgment of the original paper known as Exhibit J. A. L. No. 1 and copied in the printed record on pages 21 and 22 has a seal opposite said signature.

Also that the original of Exhibit J. A. L. No. 1 and copied in the printed record on page 23 is in the handwriting of Walter S. Cox and is endorsed in his handwriting as follows:

George Gibson Huntt to Benjamin Ogle Tayloe. Contract of sale.

FRANKLIN H. MACKEY,
Solicitor for Appellants.
WM. G. JOHNSON,
Solicitor for Appellees.

Endorsed: Court of Appeals, D. C., January term, 1895. No. 421. Fannie P. Williams *et al.*, appellants, *vs.* John W. Paine *et al.* Stipulation of counsel. Court of Appeals, District of Columbia. Filed Mar. 29, 1895. Robert Willett, clerk.

73 WEDNESDAY, *May 8th, A. D.* 1895.

* * * * * * *

FANNIE P. WILLIAMS, MARY H. BELL, ROBERT RANSOM, Jr., James J. B. Ransom, Matt W. McCorkle, Henry H. Ransom, George G. Ransom, and Seymour H. Ransom, Appellants,
vs.
JOHN W. PAINE, ESTELLE T. PAINE, JOHN PAINE, OGLE TAYLOE PAINE. } No. 421.

On motion of Mr. F. H. Mackey the time for argument is enlarged and extended for one hour on each side. The argument in the above-entitled cause was commenced by Mr. F. H. Mackey, attorney for the appellants, and was continued by Mr. W. G. Johnson, attorney for the appellees.

THURSDAY, *May 9th, A. D.* 1895.

* * * * * * *

FANNIE P. WILLIAMS, MARY H. BELL, ROBERT RANSOM, Jr., James J. B. Ransom, Matt W. McCorkle, Henry H. Ransom, George G. Ransom, ans Seymour H. Ransom, Appellants,
vs.
JOHN W. PAINE, ESTELLE T. PAINE, JOHN PAINE, OGLE TAYLOE PAINE. } No. 421.

The argument in the above-entitled cause was continued by Messrs. W. G. Johnson & Calderon Carlisle, attorneys for the appellees, and was concluded by Mr. H. O. Claughton, attorney for the appellants.

74 FANNIE P. WILLIAMS, MARY H. BELL, ROBERT Ransom, Jr., James J. B. Ransom, Matt W. McCorkle, Henry H. Ransom, George G. Ransom, and Seymour H. Ransom, Appellants,
vs.
JOHN W. PAINE, ESTELLE T. PAINE, JOHN PAINE, OGLE TAYLOE PAINE. } No. 421.

Opinion of Court.

Mr. Chief Justice ALVEY delivered the opinion of the court:

The bill in this case was filed on the 10th of February, 1893, by the appellants against the appellees. The bill, as amended, is framed with several aspects, and seeks to obtain relief in respect to several matters, and in various forms. The plaintiffs allege themselves to be entitled in fee, as heirs-at-law of Mrs. Mary Ransom, deceased, to one undivided sixth part of square No. 53, located in the city of Washington, District of Columbia, as tenants in common with the defendants, who own the other five-sixths of said square. Mrs. Ransom, under whom the plaintiffs claim, was the wife of General Robert Ransom, and died intestate, in North Carolina, February 7, 1881, her husband surviving her, but who has since died, and before the filing the bill in this case.

It appears from the allegations of the bill and the proof, that Mary Huntt, one of the three children left by Dr. Henry Huntt, who had died intestate, intermarried with Robert Ranson, Jr.; and that the three children, namely, Mary Huntt, afterwards Mary Ransom, Fannie Huntt, who intermarried with George Gibson, and George Gibson Huntt, inherited as heirs-at-law of their father Dr. Henry Huntt, the one moiety or half of said square No. 53, and of certain other parcels of ground in the city of Washington—the same having been previously acquired and held in equal moieties or halves, as tenants in common, by the said Dr. Henry Huntt and the late Benjamin Ogle Tayloe; that, being so seized and possessed, after their marriage, Mary Ransom and her husband, Robert Ransom, then an officer in the Army of the United States, and stationed at Carlisle, in

the State of Pennsylvania, by their joint power of attorney, executed and acknowledged on the 23d of May, 1859, to George Gibson Huntt, the co-owner and brother of Mrs. Ransom, authorized and empowered the said George Gibson Huntt to control, manage, bargain and sell, and in that event to convey, etc., all their right, title, and interest in said property. George Gibson Huntt was also an officer in the army. About two years from the date of the power of attorney, the civil war broke out between the States, and Robert Ransom resigned his commission in the Army of the United States, and accepted a commission in the Confederate States army, and afterwards attained the high rank of major general in that army; and during the war his wife, the mother of the plaintiffs, remained in the South, within the Confederate lines. In the summer of 1864, and during the continuance of the war, Walter S. Cox, Esq., then a practicing attorney here in the city of Washington, a relative of the heirs of Dr. Huntt, and now one of the associate justices of the supreme court of the District of Columbia, was solicited, especially by Mrs. Gibson, to effect a sale of the interest of the Huntt heirs in the property mentioned and referred to in the power of attorney, including square No. 53, held as tenants in common as before stated. Accordingly, Mr. Cox, through a real-estate broker, did effect a sale of all the interest of all the parties claiming as heirs of Dr. Huntt, in the property so held as tenants in common, and which sale was made to Benjamin Ogle Tayloe, the cotenant, at and for the sum of $2,500. Thereupon Mr. Cox rendered a statement to Mrs. Gibson, one of the parties in interest and a sister of Mrs. Ransom, as follows:

Amount of purchase.....	$2,500 00
Payment of taxes by Mr. Tayloe, amounting to.....	199 27
Leaving balance of.....	$2,300 73

75 to be divided into three parts, making the dividend to each of the three heirs the sum of $766.91. The whole amount of the purchase-money, less the taxes deducted, was paid by Mr. Tayloe to Mr. Cox, and the latter paid over the same to Mrs. Gibson; and the share of Mrs. Ransom was paid over to her, Mrs. Ransom, by her sister, Mrs. Gibson. And on the 29th of November, 1864, George Gibson Huntt, by virtue of the power of attorney from Ransom and wife, before referred to, reciting the sale and payment of the purchase-money, made and executed the deed to Tayloe, set forth in the record. Both the power of attorney and this deed to Tayloe were admitted to record together on the 14th of January, 1865.

It also appears, both from allegations and proof, that Benjamin Ogle Tayloe died testate in 1868, leaving several children, among them a daughter Julia Dickinson Tayloe, who had previously married John W. Paine, one of the defendants; and that the testator by his will, and codicil thereto, devised his real estate, including square No. 53, to his three daughters in fee-simple, as tenants in common That afterwards, by deeds of partition, dated November 7, 1870, the

real estate so devised in common was divided, and the devisees took their respective shares in severalty, and in this partition square No. 53 was allotted and conveyed to Mrs. Paine. Mrs. Paine died intestate in February, 1872, leaving surviving her her husband John W. Paine, and as her only heirs-at-law three infant children, defendants in this case. The property was vacant and wholly unimproved; and some time before the purchase of the interest of the Huntt heirs, as above stated, their interest in the property had been sold for taxes due the corporation of the city of Washington, and Tayloe had become the purchaser and taken a deed therefor; and from that time forward he continued to pay all taxes and public dues thereon; and from the time of the partition of the real estate among the three daughters of the testator, John W. Paine, one of the defendants, continued to pay the taxes thereon, and to exercise exclusive ownership over the same, in right of his wife, and for himself and his children; and subsequently, at a cost of about $125,000, he erected twenty-two stone and brick dwelling-houses on the square, from which he has been in the receipt of the rents.

The bill, alleging the facts to which we have referred, and others less material, prays for the following relief—

1st. That the deed or instrument purporting to be made by George Gibson Huntt, by virtue of the power of attorney made to him by Ransom and wife, be declared null and void, as a cloud upon the title of the plaintiffs:

2d. That the right of the plaintiffs to a one-sixth part or interest in fee as tenants in common in said square No. 53 be established against all the said defendants by decree, as well the tenant for life, as the reversioners, heirs-at-law of Mrs. Paine, deceased:

3d. That plaintiffs may have the said one-sixth part of square No. 53 set off to them in one undivided interest, if that be found practicable, and if not, that a sale of said square may be had under the direction of the court, and a distribution of the proceeds according to the interests of the parties entitled:

4th. That John W. Paine, the surviving husband of Mrs. Paine, and one of the defendants, be required, under the direction of the court, to account to the plaintiffs for the rents and profits received by him from the said one-sixth part of said square No. 53, and that accounts thereof be taken; and,

5th. That the plaintiffs may have all such further and other relief as the nature of the case may require.

All grounds of relief as set forth in the bill are controverted by the answer of John W. Paine, the tenant for life; and the other defendants, by their answer, say that they are not in possession of said square, and have never been in possession of it; and that the property in controversy descended to them upon the death of their mother, subject to an estate for life by the courtesy vested in their father; and that they have no manner of interest or concern with the account of rents and profits prayed against the life tenant, and they therefore object to the bill as being multifarious. With respect to most of the facts alleged, they say they have no personal knowledge, and they therefore demand proof thereof.

The court below dismissed the bill, and the plaintiffs have appealed.

There is a preliminary objection taken to the right of the plaintiffs to maintain the bill, which is aside from the real merits of the case, and that is, that as the plaintiffs are out of possession of the property, and the principal relief prayed being for removal of cloud from the title and for partition of the property either in specie, or for sale for purposes of partition of the proceeds of sale, the plaintiffs are not in such relation to the property as to entitle them to apply for such relief. In other words, the possession of the property being held adversely to the claim of the plaintiffs, a court of equity cannot grant relief in such case, but the remedy, if the parties be entitled to any, must be by action at law. It is clear, the bill is filed upon the assumption that the legal title to the property claimed is in the plaintiffs, and the bill therefore presents the case of parties out of possession, claiming the legal title to the property in question, and therefore seeking to oust the parties in possession, who also claim the legal title, and to compel an account for rents and profits. This objection, among others, was sustained by the court below upon the authority of Hipp *v.* Babin, 19 How. 271; Killian *v.* Ebbinghaus, 110 U. S. 573; Moore *v.* Shannon, 6 Mackey, 157; Freeman on Cotenancy and Partition, sec. 446; 2 Lead. Cas. Eq. (Agar *v.* Fairfax), pp. 900–903; 3 Pom. Eq., secs. 1387, 1388. It is supposed and contended by the defendants that this is nothing more in substance and legal effect than an ejectment bill; that the title, according to the allegations of the bill, is merely legal, and that there is no sufficient matter or circumstances stated to show the necessity for resorting to a court of equity. It is certainly the well-established doctrine of a court of equity, that it will not entertain suits for establishing legal titles, and that such doctrine is founded upon the clearest reason; "and the departing from
that practice, where there is no necessity for so doing,
76 would be subversive of the legal and constitutional distinctions between the different jurisdictions of law and equity." Hipp *v.* Babin, *supra.* And it is equally well settled that "where a party has a right to a possession, which he can enforce at law, his right to the rents and profits is also a legal right, and must be enforced in the same jurisdiction. The instances where bills for an account of rents and profits have been maintained are those in which special grounds have been stated, to show that courts of law could not give a plain, adequate, and complete remedy." *Ib.* Indeed, the case of Hipp *v.* Babin presents several features of close analogy to those presented in this case. And with respect to the matter alleged as constituting a cloud upon the title, it is well settled, that only those having a clear legal title, *with the possession*, can ask a court of equity to remove a cloud on title. Orton *v.* Smith, 18 How. 263. The matter alleged to create a cloud upon the title is apparent of record, open to the view and inspection of every one, and presents only a question of law as to the legal effect of the instruments. The plaintiffs claim a legal title, asserting that these instruments of record are utterly void and

without effect, and their right to succeed depends upon such legal title, without regard to any equitable right under the contract of sale, or any title or interest that may be asserted by the defendants. It is conceded, if the plaintiffs have not a legal title to the property claimed by them, they have no right at all.

But, without further considering, and without deeming it necessary to decide, this preliminary or jurisdictional question, we shall proceed to consider the questions arising upon the merits of the case; and these questions are—

1st. Whether the power of attorney of the 23d of May, 1859, made and executed by Robert Ransom and Mary H. Ransom, his wife, to George Gibson Huntt, and which remained unrevoked by any express act or declaration of the principals, invested the nominated attorney with such legal authority as to enable him to bargain and sell, and thereupon to convey, or to contract to convey, by deed of bargain and sale, the property therein mentioned and referred to?

2d. If the power was valid and enabled the attorney to bargain and sell the property at the time it was made, whether the subsequent occurrence of the civil war, and the principals going into the seceded States, and remaining there during the war, and the husband becoming an active participant in the war against the Union, had the effect to revoke and render null the power of attorney, and thereby to destroy all authority previously vested in George G. Huntt to deal with the property of his principals?

3d. But, supposing the power of attorney to be valid, and that it remained valid, notwithstanding the occurrence of the war, was the deed of the 29th of November, 1864, an effective execution of the power, or authorized thereby, so as to vest in the purchaser of the property a title, either legal or equitable?

4th. If the deed made under the power was not valid as a deed of conveyance by the then existing law, was it cured and made valid by the act of Congress of March 3, 1865, entitled "An act to quiet titles in favor of parties in actual possession of land in the District of Columbia."?

5th. If this act of 1865 does not apply, and the deed made by the attorney of the 29th of November, 1864, does not operate as a conveyance of the legal title, is there such equity in the defense, and on the facts of the case, as will bar and preclude the relief sought by the plaintiffs?

1. With respect to the first of these questions, it is doubtless the case, that in most, if not all the States, there are statutes authorizing the wife by joining in deed with her husband, and by separate or privy acknowledgment of the wife, to convey her real estate. But whether by statute or otherwise, it has been the custom in this country from its earliest history, for the wife to convey her real estate by the joint deed of herself and her husband. In most, if not all the States, there have been statutes prescribing certain conditions and formalities for the conveyance of the wife's real estate; such as the separate acknowledgment from her husband; such acknowledgment of the deed being regarded as one of the most essen-

tial acts to give validity to the deed. And where the prescribed forms have been complied with, the nature and extent of the estate conveyed, and the objects and purposes thereof, are unrestricted; and the courts have been liberal in supporting the right to convey. Hence a married woman may mortgage as well as unconditionally alienate her real estate, by joining her husband in the conveyance and making the acknowledgment, and this, though no part of the consideration may pass to her; and thus she may subject her real estate to the risk of complete alienation by foreclosure for her husband's debts, or by sale under a power of sale therein conferred. It is settled that *she may thus create a valid power in the mortgage to sell* in default of payment; and so she may convey upon condition, and prescribe the terms of the condition; and thus greatly depart from the old common modes and forms of conveyance of *femes covert* by fines, and common recoveries. 2 Kent Com. 150, 151, 167; Swan *v.* Wiswall, 15 Pick. 126; Whiting *v.* Stevens, 4 Conn. 44; McCullough *v.* Wilson, 21 Penn. St. 436; Black *v.* Galway, 24 Penn. St. 18; Schouler, Hus. and Wife, sec. 176.

At the common law, the conveyance of a *feme covert*, except by some matter of record, was absolutely void, and in England, until the St. 3 & 4 W. 4, ch. 74, abolishing fines and recoveries, a *feme covert* could only pass her freehold estate, not held as her separate estate, by fine or common recovery. In Maryland, however, whose laws in force in 1801 were adopted for this District, and are still in force here, except where changed or modified by acts of Congress, the substitution of the ordinary deed of conveyance by the wife for fine or common recovery, was made by the colonial statutes of 1715, ch. 47, 1752, ch. 8, and 1766, ch. 14; and the ceremony of private examination of the *feme covert*, and her voluntary acknowledgment of the deed, were made substitutes for the private examination as to her voluntary consent in the levying of the fine or recovery.

By the act of 1715, ch. 47, after declaring what nature of conveyances should be made, executed and recorded, in order to
77 pass any freehold, or an estate for a term of more than seven years, then provides, that when the grantors or bargainors may live remote from the court or officer required to take the acknowledgment, in the county where the land was situated, such acknowledgment was authorized to be taken where the grantor or bargainor lived; and it is then further provided, that "*if any such grantor or bargainor* of any lands or tenements, etc., shall happen to be out of the province, etc., at the time of the ensealing such writing, so as the same cannot be acknowledged, as is before directed, or enrolled within the time for that purpose hereinbefore limited, that *in every such case* such lands or tenements as aforesaid shall be acknowledged by *a letter of attorney*, well and sufficiently proved, etc., anything hereinbefore contained to the contrary thereof notwithstanding." And in a succeeding section of the same act, it is provided, "that if any *feme covert* be named as grantor in any such writing *indented* (the indenting is dispensed with by act of 1794, ch. 57) the same shall not be in force to debar her or her heirs, except upon her acknowledgment of the same, and the person taking such acknowl-

edgment shall examine her privately out of the hearing of her husband, whether she doth make her acknowledgment of the same willingly and freely, and without being induced thereto by fear or threats of, or ill usage by her husband, or fear of his displeasure." This acknowledgment is required to be reduced to writing and certified by the judge or justice taking the same, and it is required to be recorded, and which acknowledgment so made shall bar the *feme covert* and her heirs. And so by the act of 1766, ch. 14, it is provided that *any person or persons* conveying land and not living within the province, so that the deed cannot be acknowledged as previously directed, then and in every such case the deed or conveyance shall be acknowledged by *letter of attorney*, well and sufficiently proved, etc. And in a succeeding section of this last-mentioned act, it is provided that any *feme covert* joining with her husband in any of the several kinds of conveyances thereinbefore mentioned, and acknowledging them upon private examination, according to the form and direction of the previous act of 1715, where such *femes covert* have the right, title or interest of the lands, or any part thereof, intended to be conveyed, shall, by such execution, examination, acknowledgment and enrollment, be barred and foreclosed to all intents and purposes whatsoever. These provisions of the acts of 1715 and 1766 were in force in this District in 1859, and are still in force, and they were in no respect repealed by or in conflict with the acts of Congress of the 31st of May, 1832 (4 Stat. 520), and of the 20th of April, 1838 (5 Stat. 226), relating to the execution and acknowledgment of deeds for land in the District of Columbia. The acts of Congress do not profess to repeal the acts of Maryland of 1715 and 1766, or to be exclusive in their operation; but they have, in some particulars, not involved here, amplified and extended the provisions of the former statutes then in force. And construing these statutes altogether, and looking to the reason and policy upon which they are founded, it would seem to be clear that in the year 1859 and down to the year 1865, it was competent to a *feme covert*, by a joint power of attorney with her husband, duly executed and acknowledged according to the forms prescribed by the statute, to execute and acknowledge a valid deed of conveyance of her real estate situate in the District of Columbia. It is well settled that a power to convey land must possess the same requisites, and observe the same solemnities in execution and acknowledgment, as are necessary in a deed directly conveying the land; and that a title to land can only be acquired and lost according to the laws of the place where the land is situated. Clarke *v.* Graham, 6 Wheat. 577. In this case, the property to be conveyed was specifically mentioned and described in the power of attorney; and the power of attorney was executed and acknowledged at Carlisle, in the State of Pennsylvania, by husband and wife, under their hands and seals, and the acknowledgment and authentication of the instrument was in all respects in accordance with the provisions of the statutes in force in the District of Columbia, providing the manner and form in which the real estate of *femes covert* could be conveyed. Indeed, we do not understand that the statutory requirement in respect to the form of

acknowledgment and authentication thereof, is a matter of objection. The terms of the statutes, any "grantor or bargainor of any lands or tenements," being out of the province; or "any person or persons conveying," etc.; not residing in the province at the time, etc., may acknowledge said deed by letter of attorney, well and sufficiently proved, etc., are sufficient to embrace *femes covert*, authorized to sell and convey their real estate. If not, then the husband could not sell and convey by power of attorney, free of the contingent right of dower of his wife, for if the wife could not acknowledge by power of attorney a deed for the conveyance of her own real estate, she would be equally unable to acknowledge, by power of attorney, a deed for the relinquishment of dower in the lands of her husband. Such disability, we think, was never intended by the legislatures passing the statutes to which we have referred, to be fixed upon *femes covert*, having lands with right to convey the same.

But even in the absence of any express statutory authority, for the execution and acknowledgment of a deed of a *feme covert* by power of attorney, seeing that *femes covert* have full and complete right to convey their real estate by the joinder of their husbands in the deed, the power to execute and acknowledge deeds of conveyance by power of attorney, jointly executed by husband and wife, with the private examination and acknowledgment by the wife, as in the case of a deed of conveyance jointly executed by them, would seem to be reasonably implied, and it is difficult to perceive any good reason why it should not be allowed. It certainly subserves the convenience of parties; and we may well suppose, from the frequency of the occurrence of such powers in reported cases, that many titles are dependent upon the existence of the power of *femes covert* to make and acknowledge deeds of conveyance by attorney.

78 That such power exists in *femes covert*, with general right to convey their real estate, would seem to be the view entertained by writers of high authority. In Story on Agency, sec. 6, the author says: "In regard to married women, ordinarily, they are incapable of appointing an agent or attorney; and even in case of a joint suit at law, an appointment of an attorney by a married woman is void, and her husband may make an attorney for both. But where a married woman is capable of doing an act, or of transferring property or rights with the assent of her husband, there, perhaps, she may, with the assent of her husband, appoint an agent or attorney to do the same." And so Professor Washburn, in his work on Real Property, vol. 3, pages 232, 233, says that it is laid down, unqualifiedly, in some of the States, that a married woman cannot make a valid power of attorney, even jointly with her husband, to make a deed of her interest. "But," says the author, "it is difficult to perceive any reason for the rule where she can do the principal thing herself; and such a right is clearly recognized by statute in Massachusetts; and a similar right is also recognized by statute in New York."

The case of Holladay *v.* Daily, 19 Wall. 606, cited and relied on by the plaintiffs, would not seem to have much application to this case, though the principle of implied right in the wife, jointly with

her husband, to constitute an attorney to convey her estate, is clearly recognized. In that case, Holladay and his wife gave to one Hughes a power of attorney to sell and convey certain real property, the title to which was stated in the power to be in Holladay. Hughes sold and conveyed the premises in the name of Holladay alone, and as his attorney. The question presented was whether the deed thus executed in the individual name of Holladay, and not in the joint names of himself and wife, was sufficient to pass *his* title; and the court held that it was. In the course of the opinion, the court said—assuming that, without a statute of Colorado, authorizing the making of such power of attorney—"The authority of a married woman to convey, in connection with her husband, which is conferred, implies a power to appoint an attorney for that purpose—and there are adjudged cases which proceed upon that theory—we do not see any objection to the validity of the deed actually executed in the name of Holladay alone, or to its operation in passing the title."

But what is more immediately in point on this question, is the recognition of the right to make such power of attorney, by the act of Congress of March 3, 1865, passed for curing defects and quieting of titles in this District. By that act, the pre-existing right of a married woman, owning land in this District, to appoint an attorney jointly with her husband to convey such land, is expressly recognized, and any defects therein, or in the execution thereof, cured. After enumerating various defects in conveyances intended to be cured by the act, such conveyances are declared valid, provided, "that when the power of attorney shall have been executed by a *feme covert* the same shall be effectual and sufficient, if there shall have been such an acknowledgment of the same as would be sufficient, under the provisions of this act, to pass her estate and interest therein were she a party executing the deed of conveyance," etc. In this case, as we have already seen, the wife jointly with her husband executed the power of attorney, and she was separately examined from her husband, and made her acknowledgment in due form.

Upon the whole, we are clearly of opinion that the power of attorney was valid and sufficient to enable the attorney therein named to sell and convey the real estate of the *feme covert* therein described.

2. The next question is, as to the effect of the civil war upon the power of attorney—whether the power of attorney was thereby revoked, or its execution suspended during the war. This depends upon the nature of the duties to be performed under and in execution of the power. For it is well settled that the occurrence of war between the States or nations to which the respective parties belong does not necessarily annul and destroy all prior contracts subsisting between such parties. It is true, all trade, and private business intercourse, between the citizens or residents of the one belligerent State or nation with those of the other belligerent State or nation, is illegal and therefore void. But this principle is not so general and extensive as to include all contracts and engagements entered into *before* the war. There are some prior contracts that, from their very

nature, the subsequent occurrence of war will avoid; but those are contracts that necessarily require intercourse and communication between the citizens of the belligerent States, in order to the due performance of such contracts. In such cases, both upon principles that are universally observed and enforced as between belligerents, and as matter of necessity, the contracts are vacated by the occurrence of war between the States to which the different parties belong, because they cannot be performed, consistently with law. But that is not the case here. In this case, as we have already stated, the property, situated here in the city of Washington, was owned and held by parties as tenants in common. It was unimproved, and the question when it could be advantageously sold was, as we may well assume, a matter of great uncertainty. The parties appointing the attorney contemplated an absence, and they made the power without any limitation as to the time of its duration, or the time within which it should be executed. The power recites and declares as follows:

"To provide for the contingency of our absence, we the said Robert Ransom, Jr., and Mary, my wife, do by these presents constitute and appoint, and in o ir place put and depute the said George Gibson Huntt, of Washington city aforesaid, to be our true and lawful attorney-in-fact, for us and in our name, place and stead, to control, manage, grant, bargain and sell, and, in that event, convey all our right, title and interest in and to the said lots and square of ground, or any part or parts thereof, or to join in and for us and in our name to sign any proceedings in partition of the said lots and square, or to appear for us in court for that purpose. And in regard to the said real estate, to do, execute and perform, every act and thing necessary to be done as fully and amply as we might or could
79 do, if pers nally present. And we do hereby ratify and confirm all and whatsoever our said attorney-in-fact may legally do in the premises."

Language more comprehensive and unrestrictive could hardly be employed. And the power could well be executed without any communication or intercourse whatever with the principals making the power. The execution of the power no more required intercourse or communication with the principals than did the exercise of the power of sale in the case of The University *v.* Finch, 18 Wall., 106. In that case the question was as to the execution of the power by a person in whom a trust had been reposed, before the commencement of the war, in regard to real estate, and where the land, the trustee or donee of the power, and the *cestui que trust.*, were all within a State whose citizens were loyal and supporting the Union, while the grantors in the deed of trust, the donors of the power, were citizens and residents of one of the States declared to be in insurrection at the time of the sale, which was made while the war was flagrant; and it was held that the existence of war did not defeat the execution of the power. The right of an owner of real estate, situate within territory or part of a State over which the United States had unobstructed jurisdiction and control, to appoint an agent and invest him with authority to superintend and manage the estate,

though the owner, during the time, resided in one of the insurrectionary States, was recognized in the case of The United States *v.* Lee, 106 U. S. 196; and the principle was fully recognized and clearly stated by Mr. Justice Washington, in the cases of Conn *v.* Penn, Pet. C. C. 496, and Dennison *v.* Imbrie, 3 Wash. C. C. 396. In the case of Buchanan *v.* Curry, 19 John. 137, it was held by the supreme court of New York, that it was not unlawful for a citizen of that State to pay a debt, or perform a contract with an *alien enemy*, during war, if the payment or performance was made to the agent of such alien enemy *within that State—the contract having been made before the war.* And if the money so received by the agent be transmitted by him to the principal, without the debtor's connivance, the latter will not be responsible for it. The three cases last mentioned were all referred to with approval by the Supreme Court of the United States, in the case of Insurance Co. *v.* Davis, 95 U. S. 425, 429, 432. In the case of Ins. Co. *v.* Davis, just mentioned, the subject is quite fully discussed, and in considering the effect of war upon a power of attorney made prior to the commencement of hostilities, the court says:

"Emerigon says, that if a foreigner is forced to depart from one country in consequence of a declaration of war with his own he may leave a power of attorney to a friend to collect his debts, and even to sue for them. Traite des Assurances, vol. 1, 567. But though a power of attorney to collect debts, given under such circumstances, might be valid, it is generally conceded that a power of attorney cannot be given during the existence of war, by a citizen of one of the belligerent countries resident therein, to a citizen or resident of the other; for that would be holding intercourse with the enemy, which is forbidden. Perhaps it may be assumed that an agent *ante bellum*, who continues to act as such during the war, in the receipt of money or property on behalf of his principal, where it is the manifest interest of the latter that he should do so, as in the collection of rents and other debts, the assent of the principal will be presumed, unless the contrary be shown; but that, where it is against his interest, or would impose upon him some new obligation or burden, his assent will not be presumed, but must be proved, either by his subsequent ratification or in some other manner."

In this case there is nothing to show in the slightest manner that the principals in the power of attorney were damnified or prejudiced by the execution of the power, or that it was against their interest that the power should be executed by effecting a sale of their interest in the property. On the contrary, under the then existing circumstances, a sale was necessary as a means of realizing anything for their interest in the property. The property was entirely unproductive, being unimproved. It was liable for taxes, and taxes were in arrear; indeed, the undivided interest of the Huntt heirs had been sold for taxes, and bought in by Mr. Tayloe. It was, moreover, subject to confiscation by the Government to the extent of the life interest therein of General Ransom, the husband; and it was the right of the other parties in interest to have partition of the property, and to have their respective interests reduced to severalty

if not to have a sale for purposes of partition. Willard *v.* Willard, 145 U. S. 120. And the fact that the principals in the power of attorney were absent and within the Confederate lines would not have prevented effective proceedings for that purpose (University *v.* Finch, 18 Wall. 106); so that they were unable to retain their interest in the property in its original undivided condition. It was, therefore, rather to the interest of Ransom and wife than otherwise, that their interest in the property should be sold. In addition to this, there was approval and ratification of the sale by the receipt of the purchase-money.

We can perceive no sufficient reason, therefore, for holding that the power was either revoked or suspended by the war, or that its execution by sale of the property was prejudicial to the interest of the principals giving the power.

3. We come now to the question, whether the deed or instrument of the 29th of November, 1864, made by the attorney, George
80 Gibson Huntt, to Benjamin Ogle Tayloe, was such deed of bargain and sale of the interest of Mrs. Ransom and her husband in the property, as to bar and preclude those parties from making further claim thereto. And this presents the question, What is the true nature of the instrument? Is it a conveyance operating as a grant of the legal estate *in præsenti*, or is it only a contract for a further conveyance, contemplating a more formal and effective deed for the conveyance of the legal title? On the part of the defendants, it is contended that the instrument, though not in the ordinary form, is good and effectual as a deed of bargain and sale. While, on the other hand, it is contended by the plaintiffs, that the instrument is nothing more than a contract for a future conveyance to be executed by the principals in the power of attorney.

It is quite true, it requires no special formality to create a good deed of bargain and sale. If the deed be executed with the requisite solemnity, as prescribed by the statute, and contain words expressive of a present intention to convey and transfer the estate without further ceremony, it will, ordinarily, be sufficient. The conveyance by bargain and sale, as we know, had its origin in the ordinary contract of bargain and sale, enforcible by the court of chancery. The words bargain and sale, however, are not necessary to make it a bargain and sale, within the statute; but any words at common law, that upon a valuable consideration *would have raised a use*, will be sufficient to create a bargain and sale within the statute of uses. Gilbert on Uses, 493; Tud. Lead. Cas. 265; 2 Washb. R. Pro. 392.

The instrument here is executed as a deed, though not in the regular or usual form of a deed of bargain and sale. And while the power is referred to in the body of the instrument, the latter is signed, sealed and acknowledged as the deed or contract of the attorney, and not as that of the principals. The amount of the consideration is mentioned, and the fact of its full payment is recited; and it is then declared by the attorney executing the deed, that *he* thereby bargained and sold to said Benj. O. Tayloe, his heirs and

assignees, all the right, title, and estate of his principals, naming them, in the property described, including square No. 53, the property in controversy. The instrument then concludes in these terms: "And I hereby further agree in behalf of said Robert and Mary Ransom, that they shall and will, as soon as convenient, make and execute a proper deed of conveyance of said premises to said Benj. O. Tayloe, in fee-simple."

In our opinion this instrument has not the effect of a completed bargain and sale to convey the legal title to the property. Though it contains language sufficient to convey an estate *in præsenti*, yet, when taken in its entirety, it is very manifest that a further and more formal conveyance was contemplated. It would seem to be fully embraced by the principle of the cases of Jackson *v.* Moncrief, 5 Wend. 26; Grey *v.* Packer, 4 W. & Sergt. 18, and Ogdon *v.* Brown, 33 Penn. St. 249, cited and relied on by the plaintiffs. However, the making the sale, the receipt of the purchase-money, and the making and executing the deed or contract of sale, were acts fully within the scope of and authorized by the power of attorney, and were such acts as the parties had stipulated to ratify and confirm. Whether such contract could have been enforced as against the wife, either at law or in equity, is not the question presented in this case, and we therefore express no opinion upon that subject. On an application by the purchaser for the enforcement of the contract, questions quite different from those presented in this case would arise.

4. It is next contended, on the part of the defendants, that, whatever defect or imperfection may have originally existed in the instrument of the 29th of November, 1864, as an instrument of conveyance, that defect or imperfection was rectified and removed by the curative act of Congress of March 3, 1865, referred to in a previous part of this opinion. But in this contention we cannot concur. That act, by its terms, can only apply to and cure instruments intended as conveyances, and where the title was intended to pass, or was supposed to have passed, but the instruments proved to be defective or insufficient in the particulars specified. It was not intended to apply to an executory instrument or contract like that of the 29th of November, 1864. It was not intended to convert a mere contract of sale and purchase, having the effect to vest in the purchaser a mere equitable estate, into a legal conveyance, to transfer and vest in the purchaser the legal title to the estate. There is no provision in the act, that, by fair construction, can be made to apply to this instrument, and so far change its character as to make it effective to convey the legal estate in the property.

5. Lastly, however, the instrument, and the sale evidenced thereby, have effect, by operation of the settled principles of equity, to vest in the purchaser an equitable interest or estate. The instrument itself is inchoate or incomplete as a conveyance, and did not divest the owners and vendors of the legal title; but the bargain and sale, upon which the purchase-money was paid, created an equitable estate, which a court of equity will not divest out of the vendee, in

the absence of fraud. It is neither alleged, nor shown in proof by the plaintiffs, that there was fraud in the sale to Tayloe, or that the sale, at the time it was made, was for a price greatly inadequate; nor is it alleged or pretended that the purchase-money was not fully paid by the purchaser, as recited in the contract; and the proof shows that the purchase-money was paid over to Mrs. Ran-
81 som herself. And though Mrs. Ransom, after the close of the war, was in Washington, it is not shown that she ever objected to the sale, or that any person ever objected for her during her life. In such state of case, a court of equity *will not be active* in setting aside or vacating the sale. This is an application invoking the active interposition of a court of equity, in behalf of parties whose ancestor, under whom they claim, authorized the sale and received the purchase-money, not only to annul the sale, but to oust those claiming under the *bona fide* vendee from the possession of the premises sold, after the lapse of more than a quarter of a century, and after the property has greatly enhanced in value, and the entire square been greatly improved, so as to make the present value of the entire square, according to the testimony, to be about $250,000.

In the case of Mestaer *v.* Gillespie, 11 Ves., 621, 624, Lord Chancellor Eldon states a principle that would seem to apply to this case. His lordship, in the course of an opinion, discussing fully the doctrine of equity as applied to bargain and sale, said: "In the case, for instance, of a conveyance by bargain and sale, which cannot be complete as a legal conveyance without enrolment, under Stat. 27 Hen. 8, ch. 16, yet that very instrument, only inchoate, and not complete to pass the property, is in this court evidence of *an agreement to convey;* and the conscience is bound to make further assurance; that obligation *arising from the payment of the money.*"

In this case, the attorney was held out by the power signed and duly acknowledged by Mrs. Ransom, jointly with her husband, as competent to sell and convey the property; and having sold and received the money, the parties ought in equity and good conscience to be estopped from questioning the sale, in the absence of fraud; and if Mrs. Ransom was estopped, those claiming under her are equally so. In the bill, asking the court to declare both the power of attorney and the contract of sale null and void, without the allegation of fraud, there is neither the proffer to refund the purchase-money received, the many years of taxes paid, nor to allow for any proportionate part of the value of lasting improvements placed upon the property. The case would seem to be fully embraced by the general equitable principle well established, and which is clearly stated by Mr. Justice Story, in his work on Equity Jurisprudence, vol. 1, sec. 385. Where the author says: "In cases where one of two innocent persons must suffer a loss, and, *a fortiori*, in cases, where one has mislead the other, he, who is the cause or occasion of that confidence, by which the loss has been caused or occasioned, ought to bear it. Indeed, cases of this sort are viewed with so much disfavor by courts of equity, that neither infancy nor coverture will constitute any excuse for the party guilty of the concealment or

misrepresentation; for neither infants nor *femes covert* are privileged to practice deceptions or cheats on other innocent persons." And the learned author cites many authorities in support of the principle thus stated in his text.

This general principle of equity has been applied to various states of fact; and the Supreme Court of the United States have applied and enforced it in cases where the *equity* against alleged claims and supposed rights of married women, was certainly not stronger, or more manifest, than in the present case. The cases of Bank *v.* Partee, 99 U. S., 329, and Bein *v.* Heath, 6 How., 247, are instances, and furnish fair illustrations of the application of this general principle of equity as against the alleged claims and supposed rights of married women.

We are of opinion that the decree of the court below, dismissing the bill, was correct, and should be affirmed; *and it is so ordered.*

Decree affirmed.

82 TUESDAY, *October 1st, A. D.* 1895.

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FANNIE P. WILLIAMS, MARY H. BELL, Robert Ransom, Jr., James J. B. Ransom, Matt W. McCorkle, Henry H. Ransom, George G. Ransom, and Seymour H. Ransom, Appellants,
vs.
JOHN W. PAINE, ESTELLE T. PAINE, JOHN PAINE, OGLE TAYLOE PAINE.
} No. 421. April Term, 1895.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel; on consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per MR. CHIEF JUSTICE ALVEY.

October 1, 1895.

83 MONDAY, *November 18th, A. D.* 1895.

FANNIE P. WILLIAMS, MARY H. BELL, ROBERT RANSOM, Jr., JAMES J. B. RANSOM, MATT W. McCORKLE, HENRY H. RANSOM, GEORGE G. RANSOM, and SEYMOUR H. RANSOM, Appellants,
vs.
JOHN W. PAINE, ESTELLE T. PAINE, JOHN PAINE, OGLE TAYLOE PAINE.
} No. 421.

On motion of Mr. F. H. Mackey, attorney for the appellants in the above-entitled cause, it is ordered by the court that said appellants be allowed an appeal to the Supreme Court of the United States on giving bond in the sum of four hundred dollars.

84 Know all men by these presents that we, Fannie P. Williams, Mary H. Bell, Rob't Ransom, Jr., James J. B. Ransom, Matt W. McCorkle, Henry H. Ransom, George G. Ransom, and Seymour H. Ransom, as principals, and William F. Hellen, as surety, are held and firmly bound unto John W. Paine, Estelle T. Paine, John Paine, and Ogle Tayloe Paine in the full and just sum of four hundred dollars, to be paid to the said John W. Paine, Estelle T. Paine, John Paine, and Ogle Tayloe Paine or their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 12th day of December, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between Fannie P. Williams, Mary H. Bell, Robert Ransom, Jr., James J. B. Ransom, Matt W. McCorkle, Henry H. Ransom, George G. Ransom, and Seymour H. Ransom, appellants, and John W. Paine, Estelle T. Paine, John Paine, and Ogle Tayloe Paine, appellees, a decree was rendered against the said appellants, and the said appellants having been allowed an appeal to the Supreme Court of the United States to reverse the said decree in the aforesaid suit, and a citation directed to the said appellees, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said appellants shall prosecute said appeal to effect and answer all costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

FANNIE P. WILLIAMS, [SEAL.]
MARY H. BELL, [SEAL.]
ROBERT RANSOM, JR., [SEAL.]
JAMES J. B. RANSOM, [SEAL.]
MATT W. McCORKLE, [SEAL.]
HENRY H. RANSOM, [SEAL.]
GEORGE G. RANSOM, [SEAL.]
SEYMOUR H. RANSOM, [SEAL.]
By their attorney, FRANKLIN H. MACKEY. [SEAL.]
WILLIAM F. HELLEN. [SEAL.]

Sealed and delivered in the presence of—
ARTHUR R. COLBURN.

Approved by—
R. H. ALVEY,
Ch. Justice Court Appeals, D. C.

This bond is satisfactory to us.
CARLISLE & JOHNSON, *For Appellees.*

[Endorsed:] No. 421. Fannie P. Williams *et al.*, appellants, *vs.* John W. Paine *et al.* Bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Dec. 16, 1895. Robert Willett, clerk.

85 UNITED STATES OF AMERICA, *ss:*

To John W. Paine, Estelle T. Paine, John Paine, and Ogle Tayloe Paine, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Fannie P. Williams, Mary H. Bell, Robert Ransom, Jr., James J. B. Ransom, Matt W. McCorkle, Henry H. Ransom, George G. Ransom, and Seymour H. Ransom are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 16th day of December, in the year of our Lord one thousand eight hundred and ninety-five.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted this 16th day of December, 1895.
CARLISLE & JOHNSON,
Sol'rs for Appellees.

[Endorsed:] Court of Appeals, District of Columbia. Filed Dec. 16, 1895. Robert Willett, clerk.

86 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 85, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Fannie P. Williams, Mary H. Bell, Robert Ransom, Jr., James J. B. Ransom, Matt W. McCorkle, Henry H. Ransom, George G. Ransom, and Seymour H. Ransom, appellants, *vs.* John W. Paine, Estelle T. Paine, John Paine, and Ogle Tayloe Paine, No. 421, April term, 1895, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 21st day of December, A. D. 1895.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: Case No. 16,165. District of Columbia Court of Appeals. Term No., 114. Fannie P. Williams, Mary H. Bell, Robert Ransom, Jr., *et al.*, appellants, *vs.* John W. Paine, Estelle T. Paine, and Ogle Tayloe Paine. Filed January 29th, 1896.